Supreme Court, U.S.
FILED

03 446 SEP 22 2003

OFFICE OF THE CLERK

No. ____

IN THE

Supreme Court of the United States

JOAN CAROL LIPIN,

Petitioner,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

PETITION FOR A WRIT OF CERTIORARI

JOAN C. LIPIN
Petitioner Pro Se
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

283 HP

QUESTIONS PRESENTED

Do an injunction and sanctions obtained against petitioner, and the denial of an injunction requested by her, unconstitutionally impinge upon the free speech, equal protection and due process rights of petitioner as guaranteed by First, Fifth and Fourteenth Amendments to the Constitution?

Are Eleventh Amendment restrictions and official immunity defenses applicable to the actions of a political party official and others that are alleged to be violative of the First, Fifth and Fourteenth Amendments, and the Civil Rights Enforcement Statutes found in 42 U.S.C. §§ 1983, 1985, 1986, and 1988?

Are the decisions/orders in which Hon. Chester J. Straub, Judge, United States Court of Appeals, Second Circuit, was involved in issuing, null and void or invalid because Judge Straub was subject to mandatory disqualification pursuant to 28 U.S.C. § 455?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Joan Carol Lipin, an individual, was the plaintiff and the appellant below.

The respondents in this Court, who were the defendants and appellees below, are National Union Fire Insurance Company of Pittsburgh, Pa., Lawrence J. Baer, Mark A. Jacoby, Christopher A. Parlo, Steven R. Wall, the American National Red Cross, and Arthur W. Greig, who is sued in his individual and official capacity.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I. THE INJUNCTION IS VIOLATIVE OF PETITIONER'S FIRST AMENDMENT AND FREE SPEECH RIGHTS	9
II. DISCOVERY WAS REQUIRED AS TO WHETHER RESPONDENT GREIG WAS ENTITLED TO CLAIM IMMUNITY	11
III. THE DEFENSE OF OFFICIAL IMMUNITY DOES NOT APPLY TO ACTS IN VIOLATION OF FIRST AMENDMENT, FREE SPEECH, DUE PROCESS AND EQUAL PROTECTION RIGHTS	12
CONCLUSION	16

TABLE OF AUTHORITIES

CASES	Pages
Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 89 L. Ed. 2d 823, 106 S. Ct. 1580 (1986)	15
Chase Manhattan Bank v. Affiliated FM Insurance Company, 2003 U.S. App. LEXIS 18559 (2d Cir. Sept. 9, 2003)	6
Crawford-El v. Britton, 523 U.S. 574, 140 L.Ed. 2d 759, 118 S.Ct. 1584 (1998)	8, 12
Dombrowski v. Eastland, 387 U.S. 82 (1967)	11
Dubuc v. Michigan Board of Law Examiners, ___ F.3d ___, 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003)	7, 9, 10, 11, 14
Firefighters Local 1784 v. Stotts, 467 U.S. 561, 81 L.Ed. 2d 483, 104 S.Ct. 2576 (1984)	9
Flowers v. Carville, 310 F.3d 1118 (9th Cir. 2002)	9
Flowers v. Carville, 266 F.Supp.2d 1245 (D.Nev. Jul. 21, 2003)	9, 13
International Longshoremen's Ass'n., Local 1291 v. Philadelphia Marine Trade Ass'n., 389 U.S. 64, S.Ct. 201, 19 L.Ed.2d 236 (1967)	13
Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988)	6
Liteky v. United States, 510 U.S. 540, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)	6
Nevada Dept. of H.R. v. Hibbs, __ U.S. __, 155 L.Ed. 2d 953, 123 S.Ct. 1972 (May 27, 2003)	7, 10
Republican Party of Minnesota v. White, Chairperson Minnesota Board of Judicial Standards, 536 U.S. 765 (2002)	7
Robinson v. Shell Oil Co., 519 U.S. 337, 17 S.Ct. 843, 136 L.Ed.2d 808 (1997)	14

TABLE OF AUTHORITIES—Continued

	Pages
Schmidt v. Lessard, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974)	13
Super Tire Engineering Co. v. McCorkle, 416 U.S. 115, 40 L.Ed. 2d 1, 94 S.Ct. 1694 (1974)	9
Tumey v. Ohio, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927)	14, 15
United States v. Lanier, 520 U.S. 259, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)	12
Ward v. Monroeville, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972)	15

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST.amend. I	5, 8, 9, 11
U.S. CONST.amend. V	12
U.S. CONST.amend. XI	7
U.S.CONST.amend. XIV	2, 4, 10
U.S.CONST.amend. XIV, § 5	10
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1291	2
28 U.S.C. § 455	5
28 U.S.C. § 455(a)	6
42 U.S.C. §§ 1983, 1985, 1986, 1988	3, 4, 7, 10, 11, 12

OTHER AUTHORITIES

McKinney's N.Y. Consol. Laws, N.Y. Const. Art.VI. § 20(b)(3)	12

IN THE

Supreme Court of the United States

No. ____

JOAN CAROL LIPIN,

Petitioner,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joan Carol Lipin respectfully petitions for a writ of certiorari to review a judgment in the above entitled case by the United States Court of Appeals for the Second Circuit.

The judgment dismisses an appeal from sanctions in the form of monetary sanctions and a permanent injunction imposed upon petitioner by the United States District Court for the Southern District of New York.

OPINIONS BELOW

The unreported opinions and orders of the Court of Appeals are set forth in the Appendix to the Petition ("App.") at 1a-8a. The decisions of the United States District Court for the Southern District of New York are reported at 202 F.Supp.2d 126 (S.D.N.Y. 2002), and 2002 U.S. Dist. LEXIS 18266 (S.D.N.Y. Sept. 25, 2002), and are in the Appendix at 14a-40a; 9a-13a.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The judgment of the Second Circuit Court of Appeals dismissing the appeal was entered on February 26, 2003. The mandate was issued on the same date. (App. 5a-6a)

Rehearing was denied on April 23, 2003. (App. 3a)

On June 27, 2003, Justice Ginsburg granted petitioner's motion (03A1) to extend the time to file a petition for a writ of certiorari from July 22, 2003 to September 20, 2003. This petition for a writ of certiorari is timely under Supreme Court Rule 30.1 since September 20, 2003, fell on Saturday. In addition we are informed that the Court was forced to be officially closed on September 19, 2003, and for a period thereafter because of Hurricane Isabel.

An order denying a petition for a writ of mandamus (App. 225a-249a) was entered on July 17, 2003 (App. 1a).

Petitioner's subsequent petition for a writ of mandamus, prohibition, and quo warranto, Docket No. 03-3075, dated July 29, 2003, has not been acted upon as yet.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1291 provides in pertinent part that: "The courts of appeals * * * shall have jurisdiction of appeals from

all final decisions of the district court of the United States * * *."

Involved in this petition are the First, Fifth and Fourteenth Amendments of the United States Constitution, and the Civil Rights Enforcement Statutes, 42 U.S.C. §§ 1983, 1985, 1986 and 1988. The foregoing provisions are in the Appendix at pages 256a to 260a.

STATEMENT OF THE CASE

This petitioner arises from a lawsuit alleging continuing retaliatory actions to destroy a well established career in health services, a future career in the law, and employment prospects of petitioner, a victim of sexual harassment whose sexual harassment case in the new York Court was dismissed on procedural grounds unrelated to the merits of the case.

The dismissal of petitioner's meritorious prior action for sexual harassment was subsequently found to have resulted in "a tragedy of epic proportions." for petitioner. (App. 188a, ¶62)

The perpetrators of this "tragedy of epic proportions" include the respondents herein who have subsequently engaged in retaliatory actions against petitioner, aided and abetted by respondent Greig, whose malicious motive has been to destroy petitioner's reputation, employment opportunities and her attempts to develop a new career in the law.

The existence of subsequent defamatory statements by respondents that were maliciously uttered by lawyers to destroy the reputation, credibility and future career prospects of petitioner are in writing about and clearly defamatory. (App. 174a; 179a; 180a-183a; 186a-198a)

Respondents are co-conspirators whose subsequent retaliatory actions against petitioner are set forth in detail in the Amended Verified Complaint in the Appendix at 171a-224a, in petitioner's Notice of Appearance as a Pro Se litigant (App. 250a-255a), her motion for preliminary and temporary

relief, her affidavits filed in response to the district court's order to show why petitioner's motion for a preliminary injunction (App. 105a-170a), which sets forth still further and subsequent retaliatory actions by respondents engaged in by them after petitioner had filed her Amended Verified Complaint on May 24, 2000 (App. 126a-161a), was not "moot," and her motion for relief from judgment, and to vacate, alter, amend and make findings, and to stay, set aside and vacate opinion and order and judgment pursuant to Federal Rule of Civil Procedure 52(a) and (b), 59(a) and (e), 60(b)(2), (3), (4), and (6), and 62(b). (App. 41a-100a)

Respondents' continuing retaliatory acts perpetrated against petitioner are alleged in the Amended Verified Complaint (App.) to be violative of the Civil Rights Enforcement Statutes, 42 U.S.C. §§ 1983, 1985, 1986 and 1988, and petitioner's free speech, due process and equal protection rights under the First, Fifth and Fourteenth Amendments to the Constitution.

Petitioner was ordered by the district court to show why her injunction motion was not "moot." Despite petitioner's extensive factual showing (App. 105a-170a), the district court stated that it ". . . need not address Plaintiff's motion for injunctive relief" (App. 16a), and instead used petitioner's showing (App. 35a) as a basis for punitive action imposing monetary sanctions and a judicial gag order in the form of a permanent injunction imposed in violation of petitioner's free speech rights. (App. 101a-103a)

A principal issue presented by this petition is whether respondent Greig, who is a political lawyer is entitled to claim judicial or official immunity from liability for his retaliatory acts against petitioner, a political adversary known for speaking out for the integrity and independence of the judiciary, and against the corruption and election law violations involved in sham elections of state court judges in

New York in which respondent Greig has been involved, to the direct knowledge of petitioner. (App. 107a-115a; 205a-211a; 225a-249a)

Respondent Greig is not an employee of the State of New York, but a private lawyer whose income in large part is derived from his guardianship appointments and other similar appointments received from state court judges grateful for his assistance in receiving their nomination and election. (App. 238a-248a)

The election expenses that the judicial candidates are forced by respondent Greig to agree to pay as a condition of being considered by him as qualified for judicial office are fictitious because of the monopoly powers that Greig exercises over his party's judicial conventions for the purpose of nominating judicial candidates in New York County. (App. 237a, fn 1; 238a) Such corruption and sabotage of the nomination process of judicial candidates, to petitioner's direct knowledge as an elected Board of Elections Certified Judicial Delegate/Alternate (App. 206a), results in election fraud and a perversion of the electoral process.

Petitioner objected to such intimidating and coercive voting misconduct at the New York State Democratic Party Judicial Conventions for New York County as violative of her protected right to an independent vote, and respondent Greig conspired with the other named respondents herein to retaliate against her, in violation of her First Amendment Free Speech Rights in an attempt to silence her to prevent her from exposing such unlawful activities designed to secure the election of judges friendly to the positions asserted on behalf of their clients. (App. 237a, fn 1; 238a)

Also raised by this petition is whether Hon. Chester J. Straub, one of the panel of Judges who dismissed petitioner's appeal and also denied two substantive motions was required to be disqualified pursuant to 28 U.S.C. § 455.

On the basis of biographical information provided by Judge Straub himself and posted on the Internet (App. 234a-235a), it is apparent that the judge has direct knowledge of Greig's involvement in the process involving the nomination and election of New York judges under which such candidates essentially buy the right to be considered by agreeing to pay $250,000 to $500,000 for fictitious election expenses, as respondent Greig admitted in petitioner's presence at a forum entitled "How To Become A Judge" held at the New York City Bar Association on December 7, 2002. (App. 237a, fn 1; 238a)

Based upon his admitted connections with the same political party in which respondent Greig is a member (App. 235a), the judge's "impartiality might be reasonably questioned" under the standard of 28 U.S.C. § 455(a), and he was required to disqualify himself from participating in petitioner's appeal (App. 234a). *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988), *Liteky v. United States*, 510 U.S. 540, 548, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994). *See also Chase Manhattan Bank v. Affiliated FM Insurance Company*, 2003 U.S. App. LEXIS 18559 (2d Cir. Sept. 9, 2003), which holds that vacatur is the appropriate remedy when even an appearance of partiality prohibited under 28 U.S.C. § 455(a) exists.

Also involved in this appeal is the question of whether petitioner's claims could be considered to be "moot" in view of the continuing effect of the permanent injunction and sanctions obtained by respondents violative of petitioner's free speech rights, and their tortious interference with her right to be represented by counsel effectively for the purpose of seeking a remedy in this litigation for the injuries that have been inflicted upon her.

REASONS FOR GRANTING THE WRIT

The petition for certiorari should be granted for the following reasons.

First, the Eleventh Amendment and judicial or official immunity bases of the decisions below are irreconcilably inconsistent with petitioner's rights to a remedy under the Civil Rights Enforcement Statutes, 42 U.S.C. §§ 1983, 1985, 1986, and 1988, and with this Court's decision in *Nevada Dept. of H.R. v. Hibbs*, _ U.S. _, 155 L.Ed. 2d 953, 123 S.Ct. 1972 (May 27, 2003), a case subsequently decided.

Moreover, such an immunity defense was recently rejected in the Sixth Circuit in *Dubuc v. Michigan Board of Law Examiners*, _ F.3d _, 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003), particularly when, as here, the plaintiff has sought injunctive and declaratory relief. (App. 171a)

The converse of *Republican Party of Minnesota v. White, Chairperson Minnesota Board of Judicial Standards*, 536 U.S. 765 (2002), is presented by the instant case. If a state requires the election of state court judges, but that policy is sabotaged by the actions of a political party official, such improper actions are not subject to immunity from federal court remedies for persons such as petitioner, an eye witness of such misconduct, for injuries caused by ensuing retaliatory actions.

That respondent Greig's activities as alleged in the Amended Verified Complaint are contrary to the public policy of the State of New York, rather than in furtherance of it, is indicated by an the editorial in the *New York Times* of July 28, 2003, entitled "New York's Fake Conventions," which corroborates petitioner's allegations in the Amended Verified Complaint dated May 24, 2000, by describing the disgraceful perversion of the election requirements of the New York Constitution that has occurred. Petitioner has been an eye witness to the involvement of respondent Greig, counsel to the New York County Democratic Committee, Co-Chair of the Law Committee of the Democratic County Committee, New York County, Convenor of the Democratic

Judicial Convention of the 1st Judicial District, and election lawyer for petitioner's political club, in the perversion of such election requirements of the New York State Constitution. (App. 177a-178a; 205a)

Second, the denial of discovery to petitioner by the courts below on the issue of whether respondent Greig, a political official not employed by the State of New York, but only a private lawyer, is entitled to rely upon the defense of judicial or official immunity in connection with his involvement in conspiratorial and retaliatory acts maliciously intended (a) to silence petitioner, his political adversary, for exercising her First Amendment free speech rights in support of the preservation of the integrity and independence of the judiciary, and (b) to sabotage and destroy her ability to develop a new career to earn a living (App. 165a-169a; 238a-239), is irreconcilably inconsistent with *Crawford-El v. Britton*, 523 U.S. 574, 140 L.Ed. 2d 759, 772, 118 S.Ct. 1584 (1998).

That respondent Greig profited handsomely as a lawyer from his involvement in actions involved in the nomination and election of judges is shown in an evidentiary affidavit that he filed on December 20, 2000, in a litigated proceeding in New York County (App. 106a; 112a).

Third, the district court declined to rule on petitioner's motion for temporary and preliminary relief, in which she provides eye witness evidence regarding the perversion of the democratic process and the negation of any semblance of a true "Judicial Convention" for the purpose of casting votes to nominate judicial candidates, as is required by the New York Constitution, and continuing and subsequent retaliatory actions by respondents occurring after petitioner filed her Amended Verified Complaint, namely, respondent Greig's injection of petitioner's complaint into the record in the disciplinary proceeding regarding petitioner's former attorney, a proceeding that did not have jurisdiction over petitioner, to deprive petitioner of competent counsel to

adjudicate her federal court claims and to dismiss her complaint.

Petitioner was ordered by the district court to show why her motion for injunctive relief was not moot on the basis of collateral matters outside the record retroactively relied by the court to dismiss petitioner's Amended Verified Complaint. When petitioner did so (App. 105a-170a), the district court thereupon, without any notice or a hearing, sanctioned petitioner and imposed a permanent injunction against her for proceeding with her litigation.

The decisions below involving claims of retaliation in violation of petitioner's free speech rights are irreconcilably inconsistent with the Sixth Circuit's decision in *Dubuc v. Michigan Board of Law Examiners*, ___ F.3d ___, 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003), and the Ninth Circuit's decision in *Flowers v. Carville*, 310 F.3d 1118, 1128-29 (9th Cir. 2002), and the ensuing district court decision on remand, *Flowers v. Carville*, 266 F.Supp.2d 1245, 1252 (D.Nev. Jul. 21, 2003).

The petition for a writ of certiorari therefore should be granted.

I. THE INJUNCTION IS VIOLATIVE OF PETITIONER'S FIRST AMENDMENT AND FREE SPEECH RIGHTS.

The mootness doctrine is not applicable as a matter of law because the federal court process has not been completed in connection with this litigation in view of the adverse continuing effect of the injunction and monetary sanction to which appellant has been subjected. *See Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 40 L.Ed. 2d 1, 94 S.Ct. 1694 (1974), and *Firefighters Local 1784 v. Stotts*, 467 U.S. 561, 568, 571, 81 L.Ed. 2d 483, 104 S.Ct. 2576 (1984).

The punitive injunction and sanctions against petitioner were obtained by or on behalf of a person claiming official immunity for his actions on the basis of the claim that he had acted for the State of New York, whereas his actions were contrary to the law and policy of the State of New York since respondent Greig and his co-conspirators were motivated by the malicious purpose of silencing petitioner in violation of her constitutional rights, and destroying her efforts to re-establish herself professionally by developing a new career which became a necessity when respondents destroyed her successful career as an executive in health services.

Furthermore, the district court's refusal to consider the merits of denial of the injunction sought by appellant is inconsistent with the Sixth Court's decision on September 3, 2003, in *Dubuc v. Michigan Board of Law Examiners*, __ F.3d , 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003).

Nevada Department of Human Resources v. Hibbs, U.S. __, 155 L.Ed.2d 953, 123 S.Ct. 1972 (May 27, 2003), makes it clear that, acting pursuant to Section 5 of the Fourteenth Amendment, Congress targeted gender discrimination against women for a "heightened level of scrutiny" because of "stereotypical views" that have existed in the states "about women's commitment to work and their value as employees," resulting in the denial or curtailment of women's employment opportunities. (155 L.Ed.2d at 968)

Because of this Congressional concern, Congress has exercised the jurisdiction given it in Section 5 of the Fourteenth Amendment to enact legislation to provide remedies to facilitate equal protection for women's career and employment rights that are not subject to the Eleventh Amendment as held in *Nevada Department of Human Resources v. Hibbs*, *supra*, as set forth in the Civil Rights Statutes, 42 U.S.C. §§ 1983, 1985, 1986, and 1988.

This important decision was not available when the Courts below issued the decisions from which this appeal is taken.

II. DISCOVERY WAS REQUIRED AS TO WHETHER RESPONDENT GREIG WAS ENTITLED TO CLAIM IMMUNITY.

Respondent Greig's immunity claim is also directly contrary to a Sixth Circuit decision issued September 3, 2003, upholding a claim under 42 U.S.C. § 1983 in *Dubuc v. Michigan Board of Law Examiners*, ___ F.3d ___, 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003), in which it is held that "Dubuc is correct that judicial immunity does not apply here because defendants are not judges and do not act in a judicial capacity when enforcing the Bar admission rules that Dubuc challenges in this lawsuit (2003 U.S.App. LEXIS 18153 at [* 26], note 4), and that the defendants were properly made subject to a claim for declaratory and injunctive relief in that complaint, which had been dismissed as "moot" (2003 U.S.App. LEXIS 18153 at [* 26]). The Amended Verified Complaint in the instant case also requests declaratory and injunctive relief and petitioner made a motion for obtaining such relief which the district court declined to rule upon before it dismissed the case.

Because of this inconsistency in the Circuits on such an important issue, it is respectfully submitted that a writ or certiorari should be granted.

Further, discovery is of particular importance since the district court erred about the status and function and duties of respondent Greig in view of the petitioner's belief that his retaliatory activities against her were inconsistent with any official status, functions or duties that he possessed. In such a situation, discovery is required under *Dombrowski v. Eastland*, 387 U.S. 82 (1967).

Since the availability of defenses of official or judicial immunity defense asserted on behalf of respondent Greig

depends upon his contention that he was acting "under color of" New York law, the statutory language of 42 U.S.C. §§ 1983, 1985 and 1986, is directly applicable in making a remedy available to petitioner, and the courts below therefore were not free to ignore the availability of that remedy. See *United States v. Lanier*, 520 U.S. 259, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997).

Moreover, the New York Constitution, respondent Greig is not entitled to rely upon the defense of judicial or official immunity in view of its prohibition against the performance of a judicial function by any person such as Greig, who "holds any office or assumes the duties or exercise[s] the powers of any office of any political organization or [who is] a member of any governing or executive agency thereof." (*McKinney's N.Y. Consol. Laws*, N.Y. Const.Art.VI. § 20(b)(3).)

III. THE DEFENSE OF OFFICIAL IMMUNITY DOES NOT APPLY TO ACTS IN VIOLATION OF FIRST AMENDMENT, FREE SPEECH, DUE PROCESS AND EQUAL PROTECTION RIGHTS.

Crawford-El v. Britton, 523 U.S. 574, 591-2, 140 L.Ed. 2d 759, 772, 118 S.Ct. 1584 (1998), particularly applies to retaliatory action when it is motivated by hostility to the plaintiff.

The credentials of respondent Greig as a political manipulator are directly related to the situation that caused the dismissal by a state court judge of petitioner's prior sexual harassment complaint against a Red Cross executive, a charge that was found to be highly meritorious on the basis of a pretextual hoax that was the product of a conspiracy between lawyers from the two large law firms representing the Red Cross, namely, respondents Baer, Jacoby, Parlo, and

Wall, and the Insurance Company that acted as the financier of the skulduggery involved.

Respondent lawyers Parlo and Wall also have engaged in acts in support of the same retaliatory objective by maliciously defaming plaintiff and her employer in an unrelated federal case by using that case as a pretext to republish defamatory statements on a continuing basis known to them to be false and engaging in overt on-going retaliatory acts that have continued to take place well within any applicable statute of limitations. *See Flowers v. Carville*, 266 F.Supp.2d 1245, 1252 (D.Nev. Jul. 21, 2003).

Since the punitive injunction and sanctions obtained against petitioner were not based on any showing of a compelling state interest, and shown to cause irreparable injury to petitioner, whereas it absence causes no injury to the respondents who are clearly capable of defending themselves without resorting to the "deadly" contempt powers that an injunction gives to them, it is not constitutionally permissible under *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 715, 38 L.Ed.2d 661 (1974). *See also International Longshoremen's Ass'n., Local 1291 v. Philadelphia Marine Trade Ass'n.*, 389 U.S. 64, 75, 88 S.Ct. 201, 208, 19 L.Ed.2d 236, 244-5 (1967).

A victim of sexual harassment against a chief executive office is a prime candidate for subsequent acts of retaliation. The ceo is able to use the levers of power to inflict continuing retaliatory action subsequently upon his accuser. Nor can such retaliatory actions against petitioner be justified on the ground that her sexual harassment claims were frivolous. As set forth in the Report dated March 14, 2000, from the dismissal of petitioner's sexual harassment claim on irrelevant procedural grounds constituted "a tragedy of epic proportions."

A tragedy of even more epic proportions, however, involves the subsequent activities engaged in by respondents to ruin petitioner's reputation, credibility, and career prospects permanently by defaming petitioner, on a continuing basis, as is specifically alleged in the Amended Verified Complaint, and then seeking to escape responsibility by claiming immunity for their actions when the maliciously defamatory statements were in papers filed in a court, or uttered by a person claiming to be a state official such as respondent Greig.

The mis-reliance on such an immunity defense, however, fails to take into account the availability of a claim for retaliation.

Under *Robinson v. Shell Oil Co.*, 519 U.S. 337, 17 S.Ct. 843, 136 L.Ed.2d 808 (1997), petitioner is entitled to sue the respondents for subsequent retaliatory conduct engaged in for the purpose of silencing petitioner and destroying her economic livelihood and reputation, as alleged in detail in the Amended Verified Complaint.

The fact that such retaliatory defamation about petitioner are stated to a judge in a court proceeding, or to a lawyer, or by a lawyer in a Report, or may be stated in the future as petitioner seeks admission to the Bar makes the character of the injury of petitioner even more irreparable in nature and therefore subject to injunctive relief under *Dubuc v. Michigan Board of Law Examiners*, __ F.3d __, 2003 U.S.App. LEXIS 18153 (6th Cir. Sept. 3, 2003).

Finally, respondent Greig's personal, financial and political interest in retaliating against petitioner raises a questions of great substantive importance as to the availability of Greig's immunity defenses.

In *Tumey v. Ohio*, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927), this Court held that due process was violated where a judge received a portion of the fines collected from

defendants whom he found guilty. Such an arrangement, said the Court, gave the judge a "direct, personal, substantial [, and] pecuniary interest" in reaching a particular outcome and thereby denied the defendant his right to an impartial arbiter. *Id., at 523.*

Ward v. Monroeville, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972), extended Tumey's reasoning, holding that due process was similarly violated where fines collected from guilty defendants constituted a large part of a village's finances, for which the judge, who also served as the village mayor, was responsible. Even though the mayor did not personally share in those fines, this Court concluded, he "perforce occupied two practically and seriously inconsistent positions, one partisan and the other judicial." *409 U.S. at 60* (internal quotation marks omitted).

This Court applied the principle of Tumey and Ward most recently in *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 89 L. Ed. 2d 823, 106 S. Ct. 1580 (1986). That decision invalidated a ruling of the Alabama Supreme Court written by a justice who had a personal interest in the resolution of a dispositive issue. The same principle that invalidated the opinion written by a Justice of the Alabama Supreme Court invalidates the claim of immunity relied upon by respondent Greig and his co-conspirators as a shield for their retaliatory actions against petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOAN C. LIPIN
Petitioner Pro Se
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894

Dated: September 22, 2003

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed Jul. 17, 2003]

03-3047

IN RE: JOAN CAROL LIPIN,
Petitioner,

ORDER

At a stated Term of the United State Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 17th day of July, two thousand and three,

Present:

Hon. Guido Calabresi,

Hon. Reena Raggi,*
Circuit Judges.

Petitioner, pro se. petitions for a writ of mandamus. Upon due consideration it is hereby ORDERED that the petition for a writ of mandamus is denied because petitioner has not shown a "clear and indisputable" right to mandamus relief. *See In re Int'l Bus. Machs. Corp.*, 45 F.3d 641, 643 (2d Cir. 1995

---

* The Honorable Richard C. Wesley, Circuit Judge, United States Court of Appeals for the Second Circuit was originally scheduled to participate in deciding this motion but recused himself. The remaining two members of the panel, who agree on the disposition, issue this order pursuant to 2d Cir. R. § 0.14(a), (b). *See Murray v. National Broadcasting Co.*, 35 F.3d 45, 47-48 (2d Cir. 1994).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr
LUCILLE CARR

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed Apr. 23, 2003]

02-7493

LIPIN,
Plaintiff-Appellant

v.

NATIONAL UNION FIRE
Defendant-Appellees

PETITION FOR REHEARING

At a stated Term of the United State Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 23rd day of April, two thousand and three,

A petition for a panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Joan Carol Lipin.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT:

ROSEANN B. MACKECHNIE, Clerk

By: /s/ Arthur M. Heller
ARTHUR M. HELLER
Motions Staff Attorney

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed Feb. 26, 2003]

02-7493

JOAN CAROL LIPIN,
Plaintiff-Appellant

v.

NATIONAL UNION FIRE, et al.,
Defendant-Appellees

ORDER

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 26th day of February, two thousand and three,

Present:

Hon. Chester J. Straub,
Hon. Robert A. Katzmann,
Hon. Reena Raggi,
Circuit Judges.

Appellant, *pro se*, moves to compel disclosure, to rectify the Court's file and to remand to the district court for "certain considerations." Upon due consideration, it is ORDERED that the appeal is dismissed because it lacks an arguable basis in fact or law. *See Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995); 28 U.S.C. § 1915(e)(2). It is further ORDERED that appelant's motions are denied as moot.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr
LUCILLE CARR

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[Filed Dec. 9, 2002]

02-7493

JOAN CAROL LIPIN,
Plaintiff-Appellant,

v.

NATIONAL UNION FIRE, et al.,
Defendant-Appellees.

ORDER

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of December, two thousand and two.

Present:

Hon. Ellsworth Van Graafeiland,
Hon. Richard J. Cardamone,
Hon. Dennis Jacobs,
Circuit Judges.

Appellant, *pro se*, moves pursuant to Fed. R. App. P. 8(a) to stay the district court order imposing monetary sanctions and injunctive relief. Upon due consideration it is hereby ORDERED that the motion for the stay pending appeal is denied because appellant has not made an adequate showing of irreparable harm, nor demonstrated a substantial possibility of success on appeal, nor shown that the public interest would

be compromised by the denial of a stay. *See LaRouche v. Kezer*, 20 F.3d 68, 72 (2d Cir. 1994)

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /s/ Lucille Carr
LUCILLE CARR

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OFNEW YORK

No. 00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

-v-

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, ARTHUR W.GREIG, in his individual and official capacity,

Defendants.

September 25, 2002, Decided

JUDGES: LAURA TAYLOR SWAIN, *United States District Judge.*

ORDER

An Opinion granting Defendants' motions to dismiss in this matter was entered on March 28, 2002. Judgment was entered against Plaintiff on April 4, 2002. On April 10, 2002, Plaintiff filed a timely motion pursuant to Rules 52(a) and (b), Rule 59(a) and (e), Rule 60(b)(2), (3), (4) and (6), and Rule 62(b) of the Federal Rules of Civil Procedure seeking to stay, set aside, vacate, alter or amend the Opinion and Judgment entered. Plaintiff filed a Notice of Appeal on April 26, 2002. Subsequently, Plaintiff filed motions to disqualify Defendants' counsel, preclude evidence and submissions by Defendants, compel disclosure and find Defendants in con-

tempt for allegedly submitting affidavits in bad faith. The background of this case is set out in detail in the March 28, 2002 Opinion.

Pursuant to Federal Rule of Appellate Procedure 4(a)(4)(B)(i), an appeal is held in abeyance until Rule 52(b) and Rule 59(e) motions are decided. [*2] See Fed. R. App. P. 4(a)(4)(B)(i); *Lichtenberg v. Besicorp Group, Inc.*, 204 F.3d 397, 400 (2d Cir. 2000); *Jones v. J.R. O'Keefe*, 2000 U.S. Dist. LEXIS 17778, No. 99 Civ. 12279 (RCC), 2000 WL 1804153, at *2 (S.D.N.Y. Dec. 7, 2000). Once a decision is rendered, the previously filed Notice of Appeal returns jurisdiction to the circuit *court.See Jones v. J.R. O'Keefe, 2000 U.S. Dist. LEXIS 17778*, [WL] at *2. Rule 52 allows the Court to amend its findings or make additional findings and amend the judgment accordingly. Fed. R. Civ. P. 52(b). Rule 52 may be used to correct "manifest errors of law or fact[,]"or "to present newly discovered evidence." United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 831 F. Supp. 167, 169 (S.D.N.Y. 1998), *aff'd sub nom. United States v. Carson*, 52 F.3d 1173 (2d Cir. 1995).

Rule 59 provides that, "on a motion for a new trial in an action tried without a jury, the court may open the judgment . . . ." Fed. R. Civ. P. 59(a). Like Rule 52, Rule 59(e), which allows the district court to alter or amend the judgment, is not intended to allow a party "'to relitigate old matters, or to[*3] raise arguments or present evidence that could have been raised prior to the entry of judgment.'" *Supreme Oil Co. v. MTA*, 1997 U.S. Dist. LEXIS 17873, No. 96 Civ. 5169 (DLC), 1997 WL 715735 at *1 (S.D.N.Y. Nov. 12, 1997), (quoting 11 Charles A. Wright, et al., Federal Practice & Procedure § 2810.1, at 127-28 (1995)), *aff'd*, 157 F.3d 148 (2d Cir. 1998), *cert. denied*, 528 U.S. 868 (1999). Motions for reconsideration under Rule 59(e) are governed by the same standards governing motions for reconsideration under Local Civil Rule 6.3. See *Worldcom, Inc. v. Voice Plus Int'l*,

Inc.,2000 U.S. Dist. LEXIS 2870, No. 97 Civ. 8265 (DLC), 2000 WL 274182, at *1 (S.D.N.Y. March 13, 2000). Local Civil Rule 6.3 provides that movant shall "set[] forth concisely the matters of controlling decisions which [the movant] believes the court has overlooked." S.D.N.Y. Loc. Civ. R. 6.3. "The 'narrow aim' of Rule 59(e) is 'to make clear that district court possesses the power' to rectify its own mistakes in the period immediately following the entry of judgment." *Greene v. Town of Blooming Grove*, 935 F.2d 507, 512 (2d Cir. 1991) (citation omitted). The decision whether[*4] to grant the motion or not lies within the sound discretion of the district court. See *Dellefave v. Access Temporaries, Inc.*, 2001 U.S. Dist. LEXIS 3165, No. 99 Civ. 6098 (RWS), 2001 WL 286771, at *1 (S.D.N.Y. March 22, 2001).

As for Plaintiff's motion for relief from judgment pursuant to Rule 60(b)(2) (newly discovered evidence which by due diligence could not have been discovered in time), Rule 60(b)(3), (4) and (6) (fraud and/or misconduct of adverse parties, a judgment that is void, and other reasons justifying relief from judgment), while the Federal Rules do permit the district court to "relieve a party or party's legal representative from a final judgment," see Fed. R. Civ. P. 60(b), the Second Circuit Court of Appeals has held that "docketing of a notice of appeal 'ousts the district court of jurisdiction except insofar as it is reserved to it explicitly by statute or rule.'" *Toliver v. County of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992) (quoting *Ryan v. United States Lines Co.*, 303 F.2d 430, 434 (2d Cir. 1962)). The district, thus, may grant a rule 60(b) motion after an appeal is taken only if the moving party obtains permission from the circuit[*5] court. A district court, however, may entertain and deny a Rule 60(b) motion after an appeal has been taken. *Hyle v. Doctor's Assocs., Inc.*, 198 F.3d 368, 372 n.2 (2d Cir. 1999); Ryan, 303 F.2d at 434. Thus, this Court at this juncture is limited to either denying Plaintiff's request for Rule 60(b) relief, or advising the Court of Appeals and the parties of its willingness to grant such

relief. Rule 60(b) motions are addressed to the broad discretion of the court and are granted "only upon a showing of exceptional circumstances." *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986).

Here, Plaintiff has failed to demonstrate that this Court committed a manifest error of law in entering its opinion, order and judgment. Further, Plaintiff has failed to identify newly discovered evidence that would affect the outcome of this litigation. The Court has carefully considered Plaintiff's application and has found nothing in the record or in Plaintiff's post-judgment submissions to justify the relief Plaintiff requests. Accordingly, it is hereby ordered that Plaintiff's motion pursuant to Rules 52, 59 and 60 of the Federal Rules of Civil[*6] Procedure is denied in its entirety.

Rule 62(b) provides that, in the event a Rule 59 or Rule 60 motion is made, the Court may, in its discretion, stay the execution of the judgment pending the depositions of such a motion. Fed. R. Civ. P. 62(b). As Plaintiff's motion pursuant to Rule 59 and Rule 60 has been disposed of, Plaintiff's 62(b) motion is denied as moot.

To the extent that Plaintiff seeks to introduce additional evidence and submissions in support of her motion, the record in this case is closed. See generally *Supreme Oil Co. v. MTA*, 1997 U.S. Dist. LEXIS 17873, [WL] at *1. Thus, Plaintiff's motions to disqualify Defendants' counsel, preclude evidence and submissions by Defendants, compel disclosure and find Defendants in contempt for submitting affidavits in bad faith are also denied as moot.

Finally, this Court's Opinion states plainly that Plaintiff and her former attorney, Arthur M. Wisehart, are permanently enjoined from litigating further any claims relating to alleged harassment during, or the termination of, Plaintiff's employment with the National Red Cross, as well as any claims concerning any alleged attempts unlawfully to prevent

Plaintiff from litigating[*7] such employment related claims and any claims arising from judicial or disciplinary proceedings relating to Plaintiff's and Wisehart's misappropriation of privileged documents during Lipin I, except to seek appellate review of this decision or submit papers responding to applications, if any, by Defendants.

Opinion dated March 28, 2002 at 27. To the extent Plaintiff raises the issues above and her motion constitutes "litigating further" the claims described in the Opinion, Plaintiff's motion is also denied as violative of the Court's March 28, 2002 Order.

SO ORDERED.

Dated: New York, New York
September 25, 2002

LAURA TAYLOR SWAIN
United States District Judge

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OFNEW YORK

No. 00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

-v-

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, ARTHUR W.GREIG, in his individual and official capacity,

Defendants.

March 28, 2002, Decided
March 29, 2002, Filed

JUDGES: LAURA TAYLOR SWAIN, *United States District Judge.*

OPINION

LAURA TAYLOR SWAIN, *United States District Judge.*

Joan Carol Lipin ("Plaintiff") brings this action ("Lipin IV") against National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), Lawrence J. Baer ("Baer"), Mark A. Jacoby ("Jacoby"), Christopher A. Parlo ("Parlo"), [**2] Steven R. Wall ("Wall"), the American National Red Cross (the "National Red Cross"), and Arthur W. Greig ("Greig"), in his individual and official capacity (collectively, "Defendants"), asserting causes of action pursuant to 42 U.S.C. section 1985(2) for defamation, injurious falsehood, and obstruction of justice, civil rights causes of action pursuant to 42 U.S.C. sections 1983, 1985,

1986 and 1988, and a claim for retaliation allegedly violative of the New York City Human Rights Law.

All defendants have moved to dismiss Plaintiff's amended complaint. Defendants Baer, Parlo and the National Red Cross have in addition moved for sanctions and other relief, including injunctive relief barring Plaintiff and her former counsel[1] from pursuing new litigation arising from the events that are the subject matter of the instant case. Plaintiff has interposed her own motion for injunctive relief.

The Court has considered thoroughly all submissions and arguments related to these motions, and the decision here rendered reflects such consideration. For the following reasons, Defendants' motions are granted and Plaintiff's action is dismissed with prejudice as to all defendants. Because Defendants' motions are dispositive of Plaintiff's

---

[1] According to the amended complaint, in or about April 1996, the Departmental Disciplinary Committee of the New York State Supreme Court, Appellate Division, First Department ("DDC") initiated grievance proceedings pursuant to New York Judiciary Law section 90(6) against Plaintiff's attorney and then employer, Arthur M. Wisehart, arising from Wisehart's alleged involvement in discovery abuses in Plaintiff's initial state court action. See e.g., Am. Compl. P 36(h). Disciplinary charges were filed and referred to a Hearing Panel. Defendant Greig was appointed to chair the Panel that presided over Wisehart's hearing. On March 14, 2000, the DDC issued its "Hearing Panel Sanctions Report," recommending that Wisehart be disciplined for his involvement in the discovery abuse. Am. Compl. P 36(h).

Wisehart was subsequently suspended, on March 8, 2001, from the practice of law in the State of New York for a period of two years and has also been removed from the roll of attorneys entitled to practice before this Court. See In the *Matter of Arthur M. Wisehart*, 281 A.D.2d 23, 721 N.Y.S.2d 356, 363 (1st Dep't 2001), appeal dismissed, leave to appeal denied, 96 N.Y.2d 935 (N.Y. 2001); In the Matter of Arthur M. Wisehart, (JSR), M-2-238 (S.D.N.Y. May 18, 2001). Lipin, who was represented by Wisehart at the commencement of this action and throughout the briefing of the instant motions, entered her pro se appearance in this action on or about September 28, 2001.

claims, the Court need not address Plaintiff's motion for injunctive relief.

BACKGROUND

The following background facts are undisputed and/or matters of public record. In February 1988, Plaintiff's employment as Manager of Health Services for the National Red Cross was terminated. Thereafter, Plaintiff commenced an action in state court against the National Red Cross, the American Red Cross of Greater New York, and her former supervisor, Robert Bender, Jr. Plaintiff alleged sexual harassment, discrimination, wrongful termination, civil rights violations, conspiracy, conspiratorial cover-up, defamation, blacklisting, breach of contract, and intentional infliction of emotional distress. The state court dismissed that action, which was captioned *Lipin v. Robert M. Bender, Jr.*, The American National Red Cross and American Red Cross in Greater [**4] New York ("Lipin I"), pursuant to New York Civil Practice Law and Rules ("CPLR") section 3103(c) as a sanction following certain "heinous" and "egregious" actions by Plaintiff and her attorney, Arthur M. Wisehart ("Wisehart"). The sanctioned conduct included taking and photocopying certain privileged documents belonging to the defendants in that action. Both the Appellate Division of the New York State Supreme Court and the New York State Court of Appeals affirmed the dismissal of *Lipin I. Lipin v. Bender*, 193 A.D.2d 424, 428, 597 N.Y.S.2d 340 (1st Dep't 1993); *Lipin v. Bender*, 84 N.Y.2d 562, 572, 620 N.Y.S.2d 744, 644 N.E.2d 1300 (N.Y. 1994).

In June 1992, while her appeal from the dismissal of Lipin I was pending, Plaintiff commenced Lipin II in the United States District Court for the Southern District of New York, asserting the claims previously raised in Lipin I, and an additional claim that defendants had engaged in a conspiracy to entrap Plaintiff into taking the privileged documents and committing other litigation-related misconduct. Plaintiff made

express references in her complaint to information in the privileged documents[**5] that she had been prohibited from using. The District Court entered an order sealing the complaint and staying further proceedings in Lipin II.

In March 1993, Plaintiff commenced Lipin III, again in this District, again asserting the same claims. The District Court granted defendants' motion to dismiss Lipin II and Lipin III on the ground of claim preclusion, holding that the disposition of Lipin I barred further litigation of the underlying claims. *Lipin v. American National Red* Cross, 1996 U.S. Dist. LEXIS 396, Nos. 93 Civ. 1334, 92 Civ. 4455 (LBS), 1996 WL 18901 (S.D.N.Y. Jan. 17, 1996), *aff'd*, 104 F.3d 355 (2d Cir. 1996), opinion *vacated and superseded on reh'g*, 113 F.3d 1229 (2d Cir. 1997). Applying New York's claim preclusion law, the District Court examined each of Plaintiff's claims and found that they were all transactionally related to the claims in the state action and were therefore precluded. It found that Plaintiff's claims alleging sexual discrimination, sexual harassment, and wrongful termination had already been dismissed by the state court with prejudice. The claims of defamation and blacklisting were held identical to[**6] those dismissed in Lipin I. Her claim for intentional infliction of emotional distress was held precluded as an alternative theory of relief arising from the allegations pled in Lipin I. Finally, Plaintiff's breach of contract and quantum meruit/unjust enrichment claims were found to be based on nearly identical allegations in Lipin I, and were also held precluded by the earlier dismissal of that action. *Lipin*, 1996 U.S. Dist. LEXIS 396, 1996 WL 18901, at *7-8. The Second Circuit affirmed the dismissal of Lipin II and III, finding Plaintiff's arguments without merit. *Lipin*, 113 F.3d 1229.

Lipin IV, the matter now before the Court, is another attempt to assert the claims raised and dismissed in Lipin I, Lipin II, and Lipin III. In addition to reiterating the allegations of sexual harassment and discrimination in connection

with her employment by the National Red Cross, Plaintiff asserts a number of purported conspiracy and civil rights claims that are all premised on the notion that the evidence on which the state court based its misconduct findings in Lipin I was fraudulent. Plaintiff alleges that Defendants conspired to defame her, to[**7] obstruct justice, and to deprive her of her constitutional rights by, among other things, referring to the Lipin I misconduct findings in later litigation papers and in a report in connection with a disciplinary proceeding later commenced with respect to Wisehart, her attorney.[2] Plaintiff also contends that Defendants conspired to retaliate against her because of her commencement of Lipin I.

In Plaintiff's First Claim for Relief, she alleges that she is the victim of a conspiracy, arising out of her claims of sexual harassment and claims of litigation misconduct, to defame her. Plaintiff alleges that defendants Parlo and Wall, who are attorneys with Morgan, Lewis & Bockius LLP, the firm that represented the American National Red Cross in Lipin I, defamed Plaintiff by including in memoranda filed in an unrelated federal court case and arbitration proceeding statements that describe the findings of misconduct by Plaintiff and her attorney in Lipin I. Plaintiff alleges[**8] that defendants Parlo and Wall conspired with defendants National Red Cross and its attorneys Jacoby and Baer to publish the allegedly defamatory statements as a continuation of a conspiracy of litigation misconduct arising out of Lipin I. (Am. Compl. PP 40(i), 49, 50, 54, 55.)

Plaintiff's Second Claim for Relief alleges a conspiracy to obstruct justice and deprive Plaintiff of her constitutional rights, and also arises out of the publication of statements reporting the misconduct of Plaintiff and her attorney, Wisehart. The allegedly offending statements were made in a report, dated March 14, 2000, that was apparently prepared

---

[2] See supra note 2.

by defendant Greig in his capacity as Chair of the state court disciplinary committee "that has been investigating the disciplinary matter of plaintiff's attorney and who [sic] has threatened certain imminent action in connection therewith." (Am. Compl. P 36(h)). As in her First Claim for Relief, Plaintiff seeks to relitigate her underlying claims of sexual harassment and a continuing conspiracy of litigation misconduct arising out of Lipin I. (Am. Compl. PP 36, 62, 64-75, 77, 80-85, 139, 140, 143-146).

Plaintiff's Third Claim for Relief alleges[**9] that Defendants conspired to retaliate against her because of her filing of Lipin I by defending that action and by seeking dismissal of Lipin I on account of the misconduct committed by Plaintiff and her attorney in that action. (Am. Compl. PP 148-149). Plaintiff's Third Claim for Relief repeats the retaliatory misconduct claims that were dismissed by the state and federal courts in Lipin I, Lipin II and Lipin III.

DISCUSSION

Defendants move to dismiss Plaintiff's amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff's claims are barred by collateral estoppel and/or res judicata, by virtue of the prior decisions. Defendants further contend that the complaint should be dismissed for failure to state a claim for defamation and conspiracy. Defendant Greig asserts that the Court lacks subject matter jurisdiction of Plaintiff's claims, citing the Rooker-Feldman doctrine, and that dismissal pursuant to Rule 12(b)(1) is appropriate. Defendant Greig also claims the protection of absolute judicial immunity in connection with Plaintiff's claims arising from his disciplinary committee activities.

Rule 12(b)(1)

When defendants[**10] move for dismissal on a number of grounds, the court should "'consider the Rule 12(b)(1)

challenge first since if it must dismiss the complaint for lack of subject matter jurisdiction, the accompanying defenses and objections become moot and do not need to be determined.'" *Rhulen Agency, Inc. v. Alabama Ins. Guar. Ass'n*, 896 F.2d 674, 678 (2d Cir. 1990) (quoting 5 C. Wright and A. Miller, Federal Practice and Procedure § 1350, at 548 (1969)).

A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure when the district court lacks the statutory or constitutional power to adjudicate it. See *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). A plaintiff asserting subject matter jurisdiction generally has the burden, once challenged, of proving by a preponderance of the evidence that jurisdiction exists. See id. Unlike a motion to dismiss under Rule 12(b)(6), a motion to dismiss for lack of subject matter jurisdiction is not directed to the claim's merits. See *Exchange Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1130-1 (2d Cir. 1976).

Rooker-Feldman

The Rooker-Feldman doctrine is based on the "strictly original" subject matter jurisdiction of the federal district courts, which precludes them from sitting as appellate tribunals to review state court judgments, as well as from considering issues which are "inextricably intertwined" with such judgments or claims seeking relief that, if granted, would modify state court decisions. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-84, 75 L. Ed. 2d 206, 103 S. Ct. 1303 and n.16 (1983). The Rooker-Feldman doctrine is a judicially-created doctrine of abstention based on principles of comity. The doctrine precludes federal district court jurisdiction where the suit is in fact a collateral attack on a final state court judgment. District courts thus "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action

was unconstitutional." *Feldman*, 460 U.S. at 486. The only permissible avenues for such review are the relevant state superior courts and/or the United States Supreme Court. [**12] *Id.* at 482-84. Moreover, 28 U.S.C. section 1738 requires the federal courts to give preclusive effect to state judgments. 28 U.S.C.A § 1738 (West 2002).

The Rooker-Feldman doctrine applies where the state court judgment arises from a proceeding that was "judicial in character," and the federal action would require the district court to decide questions that were already decided by the state court or that are "closely intertwined" with an already-decided question. *Feldman*, 460 U.S. at 482-84, n.16. Here, it is undisputed that Plaintiff's original state court lawsuit—Lipin I—was a judicial proceeding. The state court decisions in that action have already resolved the principal issue that Plaintiff seeks to relitigate here—finding that she "surreptitiously removed . . . confidential documents constituting privileged material and defense counsel's attorney's work product." *Lipin v. Bender*, 193 A.D.2d at 425.

Wisehart's disciplinary proceeding, also, is "judicial" in character, because his suspension from the practice of law is a final judgment of a state court in a judicial[**13] proceeding. *Polur v. Murphy*, 1995 U.S. Dist. LEXIS 5143, No. 94 Civ. 2467 (JSM), 1995 WL 232730, at *4 (S.D.N.Y. April 19, 1995). The Appellate Division's "conduct of disciplinary proceedings with respect to those admitted to practice before it amounts to a judicial inquiry," *Erdmann v. Stevens*, 458 F.2d 1205, 1208 (2d Cir.), *cert. denied*, 409 U.S. 889, 34 L. Ed. 2d 147, 93 S. Ct. 126 (1972); see *Polur*, 1995 U.S. Dist. LEXIS 5143, 1995 WL 232730, at *4, and it is a well-established principle that the Rooker-Feldman doctrine applies to reviews of New York State's disciplinary proceedings against attorneys, see *Zimmerman v. Grievance Committee*, 726 F.2d 85, 86 (2d Cir.), *cert. denied*, 457 U.S. 1227 (1984); *Sassower v. Mangano*, 927 F. Supp. 113, 119

(S.D.N.Y. 1996). Plaintiff's claims challenging the suspension order, specifically as alleged in Plaintiff's Second Claim for Relief, are therefore dismissed for lack of subject matter jurisdiction.

Indeed, Plaintiff's First, Second and Third Claims for Relief clearly implicate the results of the prior judicial proceedings. The causes of action relating to the privileged document[**14] incident (including those asserting that citation or repetition of the state court findings constitutes tortious or unconstitutional conduct furthering vast conspiracies targeted toward Plaintiff) depends entirely on the view that the evidence found credible by the state courts was in fact false. To accept Plaintiff's premise would necessarily be to revisit state court determinations and, indeed, to declare them wrongly decided. This the Rooker-Feldman doctrine prohibits. The causes of action seeking relief in connection with Plaintiff's former employment relationship with the National Red Cross could be entertained only if this Court rejected the state court with-prejudice dismissal of Plaintiff's sexual harassment and related claims. That course is likewise foreclosed to this Court.

Plaintiff's Claims for Relief present issues that are "inextricably intertwined" with the state court's conclusions that, because Plaintiff engaged in improper conduct, her employment discrimination action should be dismissed. Plaintiff's claims thus present a direct challenge to state judicial proceedings. Pursuant to Rule 12(b)(1), Plaintiff's First, Second and Third Claims for Relief are dismissed[**15] to the extent those claims are inconsistent with the state court's findings in connection with the privileged document incident or with the with-prejudice dismissal of Plaintiff's Lipin I claims. Because a federal court is required to dismiss claims of which it lacks subject matter jurisdiction regardless of whether the parties against whom such claims are asserted

argue lack of subject matter jurisdiction,[3] the First, Second and Third Claims for Relief are dismissed as against all Defendants to that extent.

11th Amendment

Plaintiff's claims for damages against defendant Greig in his official capacity are also barred by the Eleventh Amendment to the United States Constitution, which precludes suits in federal court against a state or its agency where, as here, there is no waiver or consent to federal court jurisdiction. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 79 L. Ed. 2d 67, 104 S. Ct. 900 (1984); *Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 38-40 (2d Cir. 1977).[**16] Eleventh Amendment immunity applies to bar damage actions against state officials sued in their official capacities if the state is the real party in interest. *Farid v. Smith*, 850 F.2d 917, 921 (2d Cir. 1988). The Departmental Disciplinary Committee ("DDC") chaired by defendant Greig is a part of the Appellate Division, First Department (see N.Y. Judiciary Law § 90(2) and 22 NYCRR Part 605), which is immune from suit for damages in federal court. See *Richards v. State of New York*, 597 F. Supp. 692, 693 (E.D.N.Y. 1984), *aff'd*, 767 F.2d 908 (2d Cir. 1985), *cert. denied*, 474 U.S. 1066, 88 L. Ed. 2d 793, 106 S. Ct. 820 (1986). Here, Plaintiff's action against defendant Greig is based on actions taken in his official capacity as Panel Chairman of the DDC. The Eleventh Amendment therefore bars Plaintiff's claim against defendant Greig in his official capacity.

Absolute Immunity for Actions Taken in Quasi-Judicial Capacity

Defendant Greig is also immune from suit for damages in his individual capacity with respect to his activities as Panel

---

[3] Federal Rule of Civil Procedure 12(b)(1).

Chairman of the DDC. Under the doctrine of quasi-judicial immunity, state[**17] officials have absolute immunity from suit when the claims against them arise from duties and actions that are "functionally comparable" to the duties and actions of judges. See *Oliva v. Heller*, 839 F.2d 37, 39-40 (2d Cir. 1988) (absolute immunity for federal judge's law clerk). Absolute quasi-judicial immunity has been upheld for referees and committees appointed by state courts to conduct attorney disciplinary hearings. *Sassower v. Mangano*, 927 F. Supp. at 120; see also *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 433-34, 73 L. Ed. 2d 116, 102 S. Ct. 2515 (1982). State bar disciplinary proceedings have been found to be "clearly judicial in nature;" quasi-judicial immunity is thus available to members of disciplinary committees and panels. *Sassower*, 927 F. Supp. at 120-21.

As Panel Chair of the DDC, defendant Greig is immune from liability to Plaintiff for damages arising from actions taken in his panel capacity. Challenges to the Panel Report may, and should, be addressed by the Appellate Division. Plaintiff's remaining claims against defendant Greig are thus barred by absolute[**18] quasi-judicial immunity.

Rule 12(b)(6)

Defendants' motions are also granted to the extent they are brought pursuant to Rule 12(b)(6). In deciding a motion to dismiss under 12(b)(6) for failure to state a claim upon which relief may be granted, a court must accept as true the material facts alleged in the complaint and draw all reasonable inferences in plaintiff's favor. *Grandon v. Merrill Lynch*, 147 F.3d 184, 188 (2d Cir. 1998). The court must not dismiss the action unless "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Cohen v. Koenig*, 25 F.3d 1168, 1172 (2d Cir. 1994) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)); *Sims v. Artuz*, 230 F.3d

14, 20 (2d Cir. 2000). Because it is clear, for the reasons detailed below, that Plaintiff can prove no set of facts in support of her claim that would entitle her to relief, Defendants' motion is granted.

Collateral Estoppel and Res Judicata

The Court may, and here does, take judicial notice of the prior court decisions in respect of Plaintiff's[**19] claims. Fed. R. Evid. 201 (West 2002). Consideration of such prior decisions in connection with the adjudication of the instant motion does not constitute treatment of the motions as one for summary judgment. See *Ansonia Tenants' Coalition, Inc. v. Ansonia Assoc., Inc.*, 163 F.R.D. 468, 470 (S.D.N.Y. 1995) and cases cited therein.

Defendants assert that Plaintiff's sexual harassment, defamation and other employment-related claims are precluded by the decisions rendered in Lipin I, Lipin II and Lipin III and must therefore be dismissed. Under the doctrine of claim preclusion (also known as res judicata), "'[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Saud v. Bank of New York*, 929 F.2d 916, 918-19 (2d Cir. 1991) (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981)).[4]

A federal court "is precluded from hearing a claim that could have been but was not raised in a state court proceeding, if the courts of that state would be precluded from hearing that claim." *Collard v. Incorporated Village of Flower* Hill, 759 F.2d 205, 207 (2d Cir.) (*per curiam*), *cert.*

---

[4] See also 28 U.S.C. § 1738, which provides, in relevant part, that the records of state judicial proceedings "shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." 28 U.S.C.A. § 1738 (West 2002).

denied, 474 U.S. 827, 88 L. Ed. 2d 72, 106 S. Ct. 88 (1985). New York State has adopted a transactional analysis approach to deciding res judicata issues. *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 429 N.E.2d 1158 (N.Y. 1981). "Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *Id.* The judgment is conclusive even if the transactions "are based on different theories, seek different remedies, or allege different facts." *Lipin*, 113 F.3d 1229, 1997 WL 279912, at *5. Whether a "factual grouping" comprises a "transaction" or a "series of transactions" for this purpose "depends on how 'the facts are related in time, space, origin, or motivation, whether they form a convenient[**21] trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" *Smith v. Russell Sage College*, 54 N.Y.2d 185, 445 N.Y.S.2d 68, 71, 429 N.E.2d 746 (N.Y. 1981) (citing Restatement (Second) of Judgments [Tent. Draft No. 1] § 61). Furthermore, dismissal of an action for failure to state a claim under Rule 12(b)(6), as a final federal judgment on the merits, "precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398-99, n.3, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981).

Here, Plaintiff's state court proceedings in Lipin I provided her with a full and fair opportunity to be heard, including the opportunity for her to present her version of her involvement in the removal of the opposing counsel's documents and her contentions on the issue of whether the documents were entitled to protection as privileged. Moreover, the claims made in the subsequent federal actions, Lipin II and Lipin III, originated from the same series of transactions—Plaintiff's alleged[**22] unlawful treatment at the New York Red Cross; the termination of her employment

there; and an alleged continuing retaliatory conspiracy to cover-up the matter, defame her and ruin her reputation, originating prior to her termination and continuing throughout all of the ensuing litigation, including in connection with the discovery incident. The claims in Lipin II and Lipin III were dismissed pursuant to Rule 12(b)(6), precluding further relitigation of issues that arise from those claims. As Judge Sand noted in Lipin III:

> Plaintiff's own characterization of defendants' conduct suggests, that the obstruction of justice claim is merely part and parcel of one elaborate conspiracy theory, in which defendants allegedly colluded (1) to protect sexual harassers and preserve a practice of sex discrimination; (2) to devise retaliatory strategies by which to terminate, defame, and blacklist plaintiff; (3) to entrap plaintiff by planting documents in front of her . . . . Thus, plaintiff's allegations of evidentiary destruction and obfuscation are but factual elaborations of an overall retaliatory conspiracy theory, which was raised in Lipin I.

Lipin v. American National Red Cross, 1996 U.S. Dist. LEXIS 396, 1996 WL 18901, at *5. As to Plaintiff's claims for defamation and blacklisting, Judge Sand concluded that those too were "elements of her overarching retaliatory conspiracy theory [and were] nearly identical to the defamation and blacklisting claims asserted in state court" and therefore were precluded. *Id.* 1996 U.S. Dist. LEXIS 396, 1996 WL 18901, at *7.

Plaintiff's First Claim for Relief asserts that the conspiracy, her claims as to which were asserted and dismissed with prejudice in the prior court proceedings, is continuing and has resulted in the publication of alleged defamatory statements. Plaintiff's Second Claim for Relief asserts that the conspiracy alleged in the prior court proceedings is continuing and has resulted in the publication of defamatory statements in state

disciplinary proceedings against Wisehart. Plaintiff's Third Claim for Relief rehashes the retaliatory conspiracy theory asserted and dismissed in the prior proceedings. Plaintiff's claims against Defendants are based on the same facts or transactions alleged in prior court proceedings and, thus, are not open to relitigation in this action.

Failure to State Defamation Claim

The only cause of action that Plaintiff makes in Lipin IV that is arguably not precluded under collateral estoppel is the defamation claim against defendants Parlo and Wall, alleged primarily in Plaintiff's First Claim for Relief. It, too, fails to state claim upon which relief may be granted. The claim against defendants Parlo and Wall targets their statement in a memorandum of law submitted in another case that was being handled by Plaintiff's attorney, *Wisehart, Polin v. Kellwood Co.*,[5] that Plaintiff "stole" the privileged documents referred to in the excerpts from the opinions in the prior proceedings. See Am. Compl. P 38; *Polin*, 103 F. Supp. 2d 238, n.17.

In Polin, Wisehart represented the plaintiff and defendants Parlo and Wall represented Kellwood. Plaintiff had worked on the Polin matter as a paralegal for Wisehart's practice. The memorandum of law containing the allegedly defamatory statement was filed by defendants Parlo and Wall in support of Kellwood's motion to confirm an arbitration award which had ordered Wisehart to pay, as a sanction, a sum that represented one-half of Kellwood's fees and expenses incurred during the arbitration. The panel had based its decision to impose the sanction on what it held was proof that Wisehart had

---

[5] The Court takes judicial notice of the Opinion and Order of Judge Owen in *Polin v. Kellwood Co.*, 103 F. Supp. 2d 238 (S.D.N.Y. 2000), as it is a related action and specifically referenced in Plaintiff's complaint. See Am. Compl. PP 32-34, 38, 43-48 and 51-52.

> 1) falsely accused Kellwood and its counsel of interfering with witnesses testimony, of maintaining false financial documents, and of destroying evidence; 2) improperly transcribed a telephone conference with [one of the arbitrators] and Kellwood's counsel without telling either party; 3) unduly prolonged the hearings by a constant repetition of questions, a reiteration of the same areas of inquiry, and by continuously interposing spurious objections; 4) pursued a frivolous age discrimination claim; and 5) committed a contempt of the panel by sending a letter to the [American Arbitration Association] before the proceedings had terminated containing false and unsubstantiated statements about [an arbitrator]."

Polin, 103 F. Supp. 2d at 249. The Polin Court "flatly rejected" Plaintiff's and Wisehart's "defamatorily-described claims" against defendants Parlo and Wall. *Id. at 255.*

Under New York law, "in the context of a legal proceeding, statements by parties and their attorneys are absolutely privileged if, by any view, or under any circumstances, they are pertinent to the litigation." *O'Brien v. Alexander*, 898 F. Supp. 162, 171 (S.D.N.Y. 1995). The concept of pertinent material is "extremely broad" and "embraces anything that may possibly or plausibly be relevant or pertinent, with the barest rationality, divorced from any palpable or pragmatic degree of probability." Id. All that is required for a statement to be privileged is a minimal possibility of pertinence. See *Seltzer v. Fields*, 20 A.D.2d 60, 244 N.Y.S.2d 792, 795-96 (1st Dep't 1963), *aff'd*, 14 N.Y.2d 624, 249 N.Y.S.2d 174, 198 N.E.2d 368 (1964). The rule rests upon the notion that parties "should be able to 'speak with the free and open mind which the administration of justice demands' without the constant fear of libel suits." *Mosesson v. Jacob D. Fuchsberg Law Firm*, 257 A.D.2d 381, 683 N.Y.S.2d 88, 89 (1st Dep't 1999) (citation omitted).

During the course of the Polin litigation, Wisehart engaged in acts of misconduct which included an unauthorized recording of a telephone conversation with defendant Wall and an arbitrator, *Polin*, 103 F. Supp. 2d at 243 n.5, making false representations to the arbitration panel regarding the substance of additional witnesses' testimony, *id.* at 249, and, after the arbitration panel had awarded the defendant damages as a sanction against Wisehart, submitting to the court as "dissents" unauthorized internal memoranda from the arbitrators, *id.* at 250. In response, defendants Parlo and Wall submitted to the district court a memorandum arguing that Wisehart, with the assistance of Plaintiff, his paralegal, was trying to create a false picture of events and was engaging in and continuing a pattern and practice of deceiving the court. *Id.* at 251. In so doing, defendants Parlo and Wall called the court's attention to the incidents detailed in past Lipin proceedings as evidence of how Wisehart's past unethical conduct would inform his behavior in Polin. *Id.* As noted by Judge Owen in his Polin opinion, the past conduct "could be quite relevant to [the] Court's assessment of the panel's conclusions as to Wisehart's intentions behind his conduct during the arbitration . . . where the unanimous panel eventually bluntly sanctioned him for his misconduct." *Id.* at 255.

Because the allegedly defamatory statement was made in the course of a legal proceeding to which it was pertinent, Plaintiff fails to state a claim for defamation as against Parlo and Wall. Thus, Plaintiff's claims against defendants Parlo and Wall are dismissed.

Plaintiff's First, Second and Third Claims for Relief are therefore dismissed with prejudice in their entirety. The Court need not address Defendants' other arguments or Plaintiff's motion for injunctive relief.

Motions for Sanctions and Injunctive Relief

Defendants National Red Cross, Baer and Jacoby move pursuant to Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. Section 1927 for the imposition of sanctions on both Plaintiff and Wisehart, arguing that Plaintiff's claims are a vexatious attempt at continuing prior actions, have been interposed for an improper purpose, and have no basis under settled principles of law. Those defendants further assert that Plaintiff and Wisehart should be enjoined from commencing further lawsuits relating to Plaintiff's employment by the National Red Cross and the conduct of ensuing series of litigations because further litigation is likely to constitute further abuse of the judicial process and harassment of Defendants.

Rule 11

Defendants assert that "Plaintiff and her attorney [Wisehart] should be sanctioned under Rule 11(b)(1) and (2) because they signed and filed a complaint containing claims that are clearly barred by claim preclusion and presented for the improper purpose of derailing state disciplinary proceedings being conducted against Mr. Wisehart." Memo. of Law in Supp. of Defs.' Mot. for Sanctions and Other Relief at 10.[6]

Federal Rule of Civil Procedure 11(b) provides, in relevant part:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

---

[6] At the time the motion was filed, Plaintiff was not proceeding pro se, and was still represented by Wisehart.

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; [and]
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law . . . .

Fed. R. Civ. P. 11 (West 2002). Rule 11 contains a 21-day "safe harbor" provision, under which a motion "shall not be filed with or presented to the court" unless the movant first serves its adversary with the proposed motion and gives the adversary a three-week window of opportunity to withdraw or correct the "challenged paper, claim, defense, contention, allegation, or denial." Fed. R. Civ. P. 11(c)(1)(A). In addition, a party must move for sanctions "separately from other motions or requests." *Id.*; see *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 1995).

Defendants submitted the sanctions motion separately from all other motions. Defendants' submissions made clear that sanctions were being sought as against both Plaintiff and Wisehart. The record indicates that Defendants served Plaintiff's attorney, Wisehart, with the sanctions motion on May 31, 2000. See Aff. of Personal Service, Attached to Memo. of Law in Supp. of Defs. Mot. for Sanctions and Other Relief. The Notice of Motion was filed with the Court on July 14, 2000, more than 21 days after Wisehart was served. None of Plaintiff's pleadings or claims were withdrawn in the intervening period. Wisehart and Plaintiff responded to the Rule 11 motion in a memorandum of law filed with the Court on October 30, 2000, arguing that the motion for sanctions is part of a conspiracy "to complete the destruction of Plaintiff's source of [Plaintiff's] present employment and the ability of her attorney to continue to

represent her." See Pl.'s Memo. of Law in Opp'n to the Mot. to Dismiss and Their Additional Mot. for Rule 11 Sanctions at 38.

The Second Circuit has construed Rule 11 to mandate that sanctions be imposed under Rule 11(b)(1) when a party has signed a pleading for "an improper purpose such as to delay or needlessly increase the cost of litigation," or under Rule 11(b)(2) when a party presents to the court papers "without a belief formed, from a reasonable inquiry, that the position espoused is factually supportable and is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law." See *Caisse Nationale De Credit Agricole-CNCA, New York Branch v. Valcorp, Inc.*, 28 F.3d 259, 264 (2d Cir. 1994). Rule 11 sanctions are appropriate "where it is patently clear that a claim has absolutely no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify or reverse the law as it stands . . . ." *Eastway Constr. Corp. v. City of New York*, 762 F.2d 243, 254 (2d Cir. 1985), *cert. denied*, 484 U.S. 918, 98 L. Ed. 2d 226, 108 S. Ct. 269; see also *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 661 (S.D.N.Y.1996) (sanctions are warranted when there is a "flagrant lack of merit" to a party's claims and the likelihood of an improper motive for the filing of a lawsuit); *Shafii v. British Airways PLC*, 83 F.3d 566, 570 (2d Cir. 1996) (citations omitted) (a legal argument under Rule 11 will result in sanctions when "'it [is] clear . . . that there is no chance of success.'"). In determining whether sanctions are warranted, courts consider "whether the person has engaged in similar conduct in other litigation." Fed. R. Civ. P. 11 Advisory Committee notes (1993 Amendments).

A represented party, as Plaintiff was at the inception of this action, may not be sanctioned monetarily for a violation of subdivision (b)(2). See *Salovaara v. Eckert*, 222 F.3d 19, 32 n.11 (2d Cir. 2000) (quoting Fed.R.Civ.P. 11(c)(2)(A)). The Court, however, may sanction a represented party under

subdivision (b)(1), if the party "'had actual knowledge that filing the paper constituted wrongful conduct, e.g., the paper made false statements or was filed for an improper purpose.'" *Id.* at 32 n.8 (quoting *Calloway v. Marvel Entertainment Group*, 854 F.2d 1452, 1474 (2d Cir. 1988), *rev'd on other grounds sub nom. Pavelic & Le Flore v. Marvel Entertainment Group*, 493 U.S. 120, 107 L. Ed. 2d 438, 110 S. Ct. 456 (1989)); see *Storey v. Cello Holdings*, LLC, 182 F. Supp. 2d 355, 369 (S.D.N.Y. 2002). Improper purposes such as bad faith and an intent to delay and harass can be inferred "when applicable preclusion doctrines . . . clearly foreclose further litigation." *Scott v. Major*, 1990 U.S. Dist. LEXIS 2364, *4, No. 89 Civ. 690, 1990 WL 21319, at *1 (S.D.N.Y. March 6, 1990), *aff'd*, 923 F.2d 844 (2d. Cir. 1990), citing *McLaughlin v. Bradlee*, 256 U.S. App. D.C. 119, 803 F.2d 1197, 1205 (D.C. Cir. 1986) (an intent to harass and delay was apparent where the court had issued a final judgment finding preclusion appropriate, and the plaintiff persisted in filing four insubstantial post-judgment motions).

Here, Wisehart could easily have determined the likely success of Plaintiff's claims by examining the case law and considering the fact that many, if not all, of Plaintiff's claims were precluded. He and Plaintiff have attempted in this action to prosecute the same restated, reformulated and transactionally related claims originally decided in Lipin I, Lipin II, and Lipin III. Based on the prior decisions of the state and federal courts, Wisehart should have been able to determine that Plaintiff's claims were barred by collateral estoppel. See *Kahre-Richardes Family Foundation, Inc. v. Village of Baldwinsville, New York*, 953 F. Supp. 39, 41 (N.D.N.Y. 1997), *aff'd*, 141 F.3d 1151 (2d Cir. 1998). Wisehart should have known that there was absolutely no possibility of prevailing on the merits given the precedent against the claims and the fact that Plaintiff's claims were reformulated conspiracy theories. *Cohen v. Bane*, 853 F. Supp. 620, 626, 629 (E.D.N.Y. 1994) (where plaintiff's claims were mere

reformulated conspiracy theories, sanctions are necessary to deter such counsel from wasting the time and resources of the adversaries as well as of the court). Despite repeated dismissals, Plaintiff and Wisehart have continued to file actions based on the same facts and circumstances addressed by this and other courts. Defendants have been forced to litigate another in a series of complaints that had "'absolutely no chance of success under existing precedents.'" *Shafii*, 83 F.3d at 570 (citation omitted). Plaintiff and Wisehart, in pursuing claims "seeking to contravene the explicit findings of prior litigation without any meritorious arguments to extend the law, went far beyond the standard of objective unreasonableness in filing this action." *Pentagen Technologies International Limited v. United States*, 172 F. Supp. 2d 464, 473 (S.D.N.Y. 2001). Sanctions against Wisehart under Rule 11(b)(2) are therefore warranted.

Sanctions on both Wisehart and Plaintiff under Rule 11(b)(1) are also warranted, as the filing of the Lipin IV complaint and its accompanying papers were asserted for an improper purpose—to harass and cause unnecessary delay or increase the cost of litigation. See *Storey*, 182 F. Supp. 2d at 366. Here, as noted, claim preclusion clearly foreclosed further litigation. Plaintiff was unambiguously informed by the prior decisions that her claims are barred. Despite these warnings, however, and despite the opportunity provided by the safe harbor provision of Rule 11 to re-evaluate her submissions, Plaintiff persisted with her meritless claims. *Id.* Moreover, an apparent a motive for the commencement of the Lipin IV action was to delay and disrupt the state disciplinary proceedings against Wisehart. Plaintiff filed her complaint on May 5, 2000, two months after the state court's DDC issued its "Hearing Panel Sanctions Report" recommending that Wisehart be disciplined for his involvement in the discovery abuse. See supra note 2. By filing her complaint, Plaintiff sought damages and an injunction compelling the DDC to "withdraw the false and defamatory statements" from the

March 14, 2000 Panel Report and enjoining the DDC "from issuing any reports or statements in furtherance of the scheme to defame her." Am. Compl. P 170 (a)-(j). On November 3, 2000, Plaintiff, still represented by Wisehart, filed a motion for injunctive relief with regard to the state court proceeding. Plaintiff, now *pro se*, has continued to press the claims asserted in Lipin IV and the motion for injunctive relief, urging the Court to reinstate Wisehart.

Thus, Plaintiff and Wisehart violated Rule 11 in filing the complaint and continuing to litigate Lipin IV. "A sanction imposed for violation of . . . Rule [11] shall be limited to what is sufficient to deter repetition of such conduct . . . The sanction may consist of, or include, . . . an order to pay a penalty into court . . . ." Fed. R. Civ. P. 11(c)(2). The Court finds that a monetary sanction is necessary and appropriate here, to underscore the seriousness of the violation and to deter repetition of the offending conduct. The Court has considered Mr. Wisehart's suspension from practice and Plaintiff's representations regarding her inability to secure appropriately remunerative employment in determining the monetary sanction to be imposed. Plaintiff and Wisehart will each be directed to pay Defendants National Red Cross, Baer and Jacoby each $1,000 in respect of the attorneys' fees incurred by such defendant in defending this action.

28 U.S.C. Section 1927

Defendants also assert that Wisehart should be sanctioned pursuant to 28 U.S.C. section 1927, which provides that:

> Any attorney or other person admitted to conduct cases in any court in the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927 (West 2002). Section 1927 "looks to unreasonable and vexatious multiplications of proceedings."

United States v. International Bhd. of Teamsters, 948 F.2d 1338, 1345 (2d Cir. 1991). The Rule obliges "attorneys throughout the litigation to 'avoid dilatory tactics.'" *Pentagen Technologies*, 172 F. Supp. 2d at 473 (citation omitted). The Second Circuit has required a particularized showing of bad faith to justify sanctions under Section 1927. *Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986). Bad faith may be inferred when the attorney's actions are so meritless as to require the finding that they must have been undertaken for some improper purpose such as delay. *Shafii*, 83 F.3d at 571; *People of Vacco v. Operation Rescue National*, 80 F.3d 64, 72 (2d Cir. 1996); *International Bhd. of Teamsters*, 948 F.2d at 1345; *Salovaara*, 222 F.3d at 35.

To the extent Section 1927 sanctions might be appropriate in this case, the Court finds that it is not necessary to impose such sanctions in addition to those the Court has imposed pursuant to Rule 11.

Injunctive Relief Barring Further Litigation

Defendants move to enjoin Plaintiff and her attorney from filing further lawsuits. A district court has the authority to enjoin a plaintiff who engages in a pattern of vexatious litigation from continuing to do so. *Fitzgerald v. Field*, 1999 U.S. Dist. LEXIS 17372, No. 99 Civ. 3406 (RWS), 1999 WL 1021568, at *5 (S.D.N.Y. Nov. 9, 1999); see *Safir v. United States Lines, Inc.*, 792 F.2d 19, 23 (2d. Cir. 1986). In determining whether or not to restrict a litigant's future access to the courts, courts in this Circuit consider the following factors:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has

> caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Safir, 792 F.2d at 24. In limiting a plaintiff's ability to litigate, courts consider whether any restrictions imposed are, "taken together, not so burdensome as [to] deny the litigant meaningful access to the courts." *Abdullah v. Gatto*, 773 F.2d 487, 488 (2d Cir. 1985) (quoting *In Re Green*, 215 U.S. App. D.C. 393, 669 F.2d 779, 786 (D.C. Cir. 1981)).

Here, a review of the past claims before this Court and the New York State courts reveals clearly that Plaintiff and her attorney "cannot be depended upon to accept the results of motion practice or the dismissal of [their] claims." *Fitzgerald*, 1999 U.S. Dist. LEXIS 17372, 1999 WL 1021568, at *5. This is the fourth complaint filed by Plaintiff asserting essentially the same claims in slightly altered guise. Plaintiff's prior attempts to pursue these claims have been rejected by state and federal courts. She has been represented by Wisehart in each instance; indeed, the amended complaint suggests that Plaintiff and her attorney were acting as co-litigants in Lipin IV. (See e.g. Am. Compl. PP 47, 82, 85, 98). Because it is clear that neither can be depended upon to desist from repeated attempts to relitigate previously-rejected claims and each rejection has led to elaboration, of an ever-broadening conspiracy theory, the extraordinary remedy of injunctive relief barring the commencement of further related litigation is appropriate. See *Safir v. United States Lines, Inc.*, 616 F. Supp. 613, 619 (E.D.N.Y. 1985); *Fitzgerald*, 1999 U.S. Dist. LEXIS 17372, 1999 WL 1021568, at *5.

Plaintiff and Wisehart will therefore be permanently enjoined from litigating further any claims relating to alleged harassment during, or the termination of, Plaintiff's employment with the National Red Cross, as well as any claims concerning any alleged attempts unlawfully to prevent Plain-

tiff from litigating such employment-related claims and any claims arising from judicial or disciplinary proceedings relating to Plaintiff's and Wisehart's misappropriation go privileged documents during Lipin I, except to seek appellate review of this decision or submit papers responding to applications, if any, by Defendants.

CONCLUSION

For the reasons stated above, Defendants' motions are granted and Plaintiff's action will be dismissed with prejudice. Plaintiff and Wisehart are found to have violated Rule 11, and each is directed to pay each of Defendants National Red Cross, Baer and Jacoby $1,000 in respect of the attorneys' fees incurred by such defendant in defending this action. Plaintiff and Wisehart are permanently enjoined from litigating further any claims relating to alleged harassment during, or the termination of, Plaintiff's employment with the National Red Cross, as well as any claims concerning any alleged attempts unlawfully to prevent Plaintiff from litigating such employment-related claims and any claims arising from judicial or disciplinary proceedings relating to Plaintiff's and Wisehart's misappropriation of privileged documents during Lipin I, except to seek appellate review of this decision or submit papers responding to applications, if any, by Defendants.

ORDER

For the reasons set forth in the Opinion filed simultaneously herewith, it is hereby

ORDERED, that Defendants' motions to dismiss are granted; and it is further

ORDERED, that Plaintiff's action is dismissed with prejudice; and it is further

ORDERED, that Plaintiff and her former attorney Arthur M. Wisehart ("Wisehart") are found to have violated Rule 11

of the Federal Rules of Civil Procedure, and each is hereby directed to pay each of Defendants National Red Cross, Baer and Jacoby $1,000 in respect of the attorneys' fees incurred by such defendant in defending this action; and it is further

ORDERED, that Plaintiff and Wisehart are permanently enjoined from litigating further any claims relating to alleged harassment during, or the termination of, Plaintiff's employment with the National Red Cross, as well as any claims concerning any alleged attempts unlawfully to prevent Plaintiff from litigating such employment-related claims and any claims arising from judicial or disciplinary proceedings relating to Plaintiff's and Wisehart's misappropriation of privileged documents during Lipin I, except to seek appellate review of this decision or submit papers responding to applications, if any, by Defendants.

Dated: New York, New York

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

-against-

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL and OFFICIAL CAPACITY,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF JOAN CAROL LIPIN IN SUPPORT OF MOTION

Oral Argument and an evidentiary hearing are requested

JOAN CAROL LIPIN, being duly sworn, deposes and says:

1. I am the plaintiff in this litigation, and respectfully submit this affidavit in support of the above entitled motion.

2. The Court's opinion (Exhibit A annexed hereto) and order (Exhibit B annexed hereto) dated March 28, 2002, were entered on March 29, 2002. The Judgment dated March 29, 2002, and entered on April 4, 2002, is annexed hereto as Exhibit C.

3. My verified and amended verified complaints are dated May 5, 2000, and May 24, 2000.

4. My amended verified complaint and verification statement are annexed hereto as Exhibit D.

5. My amended verified complaint asserts that defendant Greig receives political favors in his capacity as a Receiver, and as a Court Evaluator. (Amnd.Ver.Cmplt. ¶¶ 36, 56, 85, 87, 104, 106, 116-124, 127-137, 141, 143.)

6. As shown therein, there is no factual basis for the claim of immunity on the part of defendant Greig and his co-conspirators in the political spoils system that he orchestrates in the selection of judges who are friendly to the interest of large corporate defendants and their insurance companies.

7. Nor is there any factual basis for application of issue preclusion or claim preclusion.

8. As stated in *Khandhar v. Elfenbein*, 943 F.2d 244, 249 (2d Cir. 1991):

> "If significant new evidence is uncovered subsequent to the proceeding said to result in an estoppel of the present action, then it cannot be found that a party was afforded a full and fair opportunity to present his case in the absence of that evidence."
>
> "Cited with approval in *Khandhar* in support of the Court's decision is 73 N.Y.Jur.2d *Judgments* § 321.

9. As held in *Lytle v. Household Manufacturing Inc.*, 494 U.S. 545, 553-54 (1990), relitigation of such claims before a jury is the only mechanism available to provide an adequate remedy for the irreparable injury caused by the violation of my jury trial rights.

10. Defendant Greig aided and abetted by the members of the Disciplinary Committee make a specialty of causing proceedings to be brought against small law firm lawyers,

without regard to their merit, on the basis of what are fictitiously referred to "sua sponte" proceedings, instigated by the large firm lawyers who are defendants in this litigation or their clients who are the adversaries of the small law firm lawyers and their clients.

11. Such big law firm lawyers themselves are protected by the Disciplinary Committee from any disciplinary proceedings that should be commenced against them concerning matters of public knowledge, such as the circumstances of this case, or in the circumstances involving the widespread pattern or practice of unethically representing conflicting interests as shown in the front page in the *New York Law Journal* for March 7, 2002, naming specific instances of big firms representing clients with conflicting interests engaged in by the large law firms as shown in Exhibit E annexed hereto.

12. That the prevalence of a pattern and practice of such ethical violations by large firms has not led to disciplinary proceedings that would incapacitate their ability to continue to represent their clients is a violation of my equal protection rights as a client of a lawyer who has been incapacitated from continuing to represent me as a result of the conspiracy of such large firm lawyers pleaded herein.

13. Violation of my equal protection rights are asserted at paragraphs 2, 3, 59, 76-83, 143, 144, 170 of the amended verified complaint herein, and as set forth below at ¶¶ 76-83, 143):

> "76. . . . was denied equal protection of the laws when she filed a charge on October 22, 1992, with the Departmental Disciplinary Committee, Supreme Court, Appellate Division, First Judicial Department, requesting that proceedings be commenced for the purpose of disciplinary action against attorneys Baer and Jacoby for filing their false affidavits sworn to July 3, 1991, in con-

nection with the incidents involving the documents, but no investigation on plaintiff's complaint by the Disciplinary Committee was made regarding such false affidavits of attorneys because it had "other priorities" that it apparently considered to be more important.

"77. Although the charge of perjury in a sworn statement by a President of the United States has been deemed sufficiently serious to warrant the institution of an extended investigation and impeachment proceedings, and as reported on page 1 in the *New York Times* of May 23, 2000, has caused the disciplinary committee of the Arkansas Supreme Court to recommend that the President be disbarred from practicing law in that State, the Departmental Disciplinary Committee, Supreme Court, Appellate Division, First Department, because of "other priorities," declined even to investigate plaintiff's claim that false affidavits had been used by a New York "big firm" lawyers, whose services are considered to be so valuable as to warrant charges of $300-$500 per hour, and more, in furtherance of a scheme to obstruct justice, and to retaliate against and smear, defame and ruin the reputation of a Red Cross employee known to be a victim of pervasive sexual harassment, and to obtain dismissal of her case on the basis of a conspiratorial hoax or the cover-up of their gross carelessness involving said documents by the use of false affidavits.

"78. After declining to investigate plaintiff's charge concerning the use of false affidavits by Red Cross attorneys, the Disciplinary Committee that had sheltered the "big firm" attorneys from any investigation of their resort to provably false and perjured affidavits, as not being important enough to be among its "priorities," caused further injury to plaintiff in furtherance of the retaliatory motivation by the "big firm" attorneys from WEIL, GOTSHAL & MANGES LLP, who had utilized

such false affidavits, by commencing disciplinary proceedings against a small law office, plaintiff's employer, seemingly on a *sua sponte* basis, without any complaint whatsoever having been filed, under a notice dated December 22, 1993."

"79. The bias exhibited by the Greig Report dated March 14, 2000, in favor of big firm lawyers such as WEIL, GOTSHAL & MANGES LLP, who can and do offer salaries to inexperienced beginners of over $100,000 per year, and profits to partners in the range of $1,000,000 per year or more, to conduct litigation, with or without merit, against small law firms such as WISEHART & KOCH that frequently are required to perform their services for victims of discrimination and civil rights abuses for nothing, or less than nothing, as in the protracted litigation involving plaintiff, constitutes a violation of the rights to equal protection of the laws of plaintiff and the class of other impecunious clients represented by the small law office representing her.

"80. Wrongs that each of the defendants herein have conspired to commit, have committed, and are about to be committed for the purpose of impeding, hindering, obstructing, and/or defeating the due course of justice in the State of New York, with intent to deny and deprive plaintiff Lipin of the equal protection of the laws, and to injure plaintiff, her liberty and/or her property interests for lawfully enforcing or attempting to enforce the right of plaintiff to receive due process of the law, in violation of 42 U.S.C. § 1985(2) include:

(a) A conspiracy involving the utilization of false affidavits by the attorney defendants herein, who are officers of the State Court as a matter of law, and whose actions therefore constitute state action, to obstruct and defeat the due course of justice for plaintiff who sought to obtain a jury determination as to the merits of her claim of unlawful sexual harassment and

of her claim of unlawful sexual harassment and sex discrimination, with the malicious purpose and intent of causing injury to plaintiff and to her property, for attempting to enforce her rights as a woman to equal protection of the laws;

(b) Said conspiracy involves the obstruction of the due course of justice by repeating and renewing the false and defamatory statements about plaintiff in said affidavits, and in memoranda based thereon, on a continuing basis;

(c) Said conspiracy included conduct by defendants Baer, Jacoby and Parlo that was so careless as to indicate that they were not concerned with the protection of the asserted privilege as to said documents but instead were acting in furtherance of a conspiracy to obstruct justice by entrapping plaintiff by making said documents available to plaintiff with the knowledge, purpose and intent that plaintiff would be unable to resist reading them and to intimidate plaintiff and her attorney in light of their libelous statements about her and her family with the expectation that they would be dissuaded from pursuing her meritorious claims for sexual harassment;

(d) Defendant Greig aided and abetted said conspiracy and acted in furtherance thereof, by relying upon said false and perjured affidavits of defendants Baer and Jacoby in preparing his Report dated March 14, 2000, but ignored the affirmation of Edmund Purves, Esq., dated July 22, 1992, and the testimony of plaintiff to the contrary, and failed and refused to allow adequate time for a hearing to be conducted to inquire into how defendant attorneys came to deposit said documents where they were available to plaintiff in violation of the obligation of due care respecting the handling of said documents, an issue that the Appel-

late Division, First Department, found to have been left open in its decision dated May 11, 1993, in *Joan C. Lipin v. Robert M. Bender, Jr., et al.*, 193 A.D.2d 424, 425, 597 N.Y.S.2d 340, 343, when it said:

> "It is unclear why and by whom the documents were placed in that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 x 6 foot counsel [conference] table;" and

"(e) The Greig Report dated March 14, 2000, compounds and aggravates the injury to plaintiff by purporting to justify and exonerate the defendants and their co-conspirators, whose actions were responsible for the dismissal of plaintiff's meritorious claims for sexual harassment, discrimination, and retaliation, on the basis of plaintiff's receipt of the documents placed in front of her by attorneys as a hoax, or as a result of carelessness so gross as to result in a waiver of any claim of attorney client privilege, and without any determination by a jury regarding the falsity of the personal knowledge affidavits of defendants Baer and Jacoby sworn to July 3, 1991.

"81. By failing and refusing to withdraw affidavits known by them to be false, said defendants retaliated further against plaintiff by aiding and abetting defendant Greig and the staff of the Disciplinary Committee in threatening to destroy the continuing attempt by plaintiff, a person over whom they have no jurisdiction, to develop a new career by tortiously interfering with her present employment, and threatening to destroy, cripple or severely impair her attorney's continuing ability to practice law, and to service his needy clients including plaintiff.

"82. Defendant Greig has knowingly aided and abetted said conspiracy by threatening to close down plaintiff's employer, and to make it impracticable for him to continue to service his clients or practice law, particularly in light of the relatively short span of productive time available that foreseeably remains to him after nearly 45 years of practicing law. Defendant Greig's threatened action will cause irreparable injury to plaintiff, her employer, and to his needy clients, unless a damage remedy and injunction are provided pursuant to 42 U.S.C. § 1986.

"83. Said threatened action also constitutes irreparable injury since plaintiff Lipin, whose date of birth is August 25, 1947, is seeking to advance her training and career opportunities by applying for admission to law school, but the repetitious publication of defendants' defamatory statements about her on a continuing basis will foreseeably derail that effort or cause her admission to the Bar to be irreparably injured even if she succeeds in being admitted to law school, after age 50, and devoting years of further effort and expense to studying law at night, and eventually seeking to pass the Bar Examination and obtain admission to the Bar."

* * * * *

"143. Said actions were and are violative of plaintiff's rights as set forth in 42 U.S.C. § 1985 because:

(a) they were based upon the existence of a continuing conspiracy by defendants;

(b) having the purpose and effect of depriving, directly or indirectly, plaintiff of equal protection of the laws, in violation of her liberty and property interests, and also her privileges and immunities under the law as well as her right to due process, and her jury trial

rights with respect to her claims for sexual harassment, discrimination and retaliation;

(c) the co-conspirators and the other conspirators have committed repeated acts in furtherance of the conspiracy for the purpose of destroying plaintiff, her career, plaintiff's attempt to develop a new career, plaintiff's political efforts in favor of the merit selection of judges, and causing further injury to plaintiff's health and her condition involving severe post-traumatic stress syndrome, and plaintiff's ability to obtain effective legal representation;

(d) plaintiff has been injured in both her person and her property and has been deprived of having and exercising her right to a hearing with the safeguards of due process of law and before a jury with respect to her meritorious claims as set forth above; and

(e) the Red Cross officials including Robert M. Bender, Jr., have knowingly and maliciously adopted procedures and condoned actions of harassing, humiliating and demeaning women employees and treating them as quasi-slaves or "trophies" (i) to be used for their own aggrandizement, titillation, amusement and ego satisfaction (ii) in furtherance of the complete humiliation, abasement, and exploitation of those female employees, and (iii) who actively have engaged in the destruction of the careers, health and reputation of any such employees who object, and who seek to bring an end to such unlawful acts and practices of sexual harassment and discrimination."

14. The Court's dismissal of the claims set forth in the amended verified complaint, and the imposition of sanctions and an injunction, also was contrary to the opinion of Justice Thomas for a unanimous court in *Swierkiewicz v. Sorema*,

___ U.S. ___, 122 S.Ct. 992, 152 L.Ed 2d 1 (Feb. 26. 2002), which states in pertinent part:

> "It thus seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered."
>
> * * * * *
>
> "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exception. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake. n3 This Court, however, *has declined to extend such exception s to other contexts.* In Leatherman we stated: `The Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, *but do not include among the enumerated actions any reference to complaints alleging municipality liability under § 1983.* Expressio unius est exclusio alterius.' 507 U.S. at 168. Just as Rule 9(b) makes no mention of municipality liability under Rev.Stat. § 1979, 42 U.S.C. § 1983 (1994 ed., Supp. V), neither does it refer to employment discrimination. Thus, complaints in these cases, as in most other, must state only the simple requirements of Rule 8(a)."

15. That my equal protection rights under the constitution were violated by large firm lawyers who engage in big time violations of professional ethics and conflicts of interest is indicated by the item from the *New York Law Journal* for April 5, 2002, a copy of which is annexed hereto as Exhibit F, listing Morgan, Lewis & Bockius as having received $365,000 for fees as bond counsel from the City of New York for services as "disclosure counsel," notwithstanding the shocking record of that law firm's multiple acts of fraudulent conduct and RICO violations, including wilful misconduct

involving conflicts of interests covering a period of at least five years that are shown to have occurred in the Pennsylvania Insurance Commissioner's complaint and accompanying news item set forth in Exhibit G annexed hereto, in which the law firm of Morgan, Lewis & Bockius is a named defendant.

16. Such illegal and unethical conduct, including the use of falsified documents and reports by the law firm of Morgan, Lewis & Bockius occurred at the time Morgan, Lewis & Bockius was counsel for the American National Red Cross in the New York action when the cause and effect of the use of falsified documents and reports, which defendants caused to be copied from files and deliberately brought to the courthouse for placement in an open manner on the conference table where I was known to usually sit, by attorney/defendant Parlo and his former client the American National Red Cross as co-conspirators with defendants National Union Fire Insurance Company of Pittsburgh, PA, and the Weil, Gotshal & Manges co-conspirators Jacoby and Baer obtained the dismissal of my state action through fraud and trickery that included the use of personal affidavits sworn to July 3, 1991, that were found to be false by the finding of Justice Moskowitz on July 11, 1991, and by each and every court as shown by its adoption of my testimony on July 8, 1991 that the disputed documents were found on the conference table and not taken from Baer's briefcase as he falsely swore in his personal knowledge affidavit that triggered the dismissal.

17. Defendant Christopher A. Parlo, Esq., of Morgan, Lewis & Bockius, counsel for defendant American National Red Cross, has direct and personal knowledge that the Baer and Jacoby affidavits sworn to July 3, 1991, are false, and because of his unethical conduct he has committed fraud and trickery on the court. As such, he is a fact witness.

18. The following findings asserted on behalf of the Deputy Insurance Commissioner of the Commonwealth of

Pennsylvania and filed in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 96-CV-6643 in *Taylor, Deputy Insurance Commissioner of Pennsylvania v. Stewart and Morgan, Lewis & Bockius*, Second Amended Complaint dated September 3, 1997, are relevant to the conflict of interests asserted in this litigation (Exhibit G annexed hereto):

> "32. *Contrary to ML&B's public assertions since Stewart's criminal indictment, ML&B was intimately involved as outside general counsel to SNLIC, EBL Life and other Stewart Entities in all of the key transactions that effectively rendered SNLIC and EBL Life insolvent. The firm, through Stewart, Harbaugh and others*, rendered opinions that purported to justify and legitimize the fraudulent transactions, crafted the original fraudulent acquisition of SNLIC, masterminded the litigation and negotiation strategy with the Ohio Insurance Department that led to SNLIC's redomestication to Pennsylvania, negotiated a fraudulent reinsurance agreement with Alabama Reassurance Company, *hid the agreement from California regulators, and created the byzantine transaction through which Stewart divested himself of his interests in the insolvent SNLIC and EBL Life while stripping out the few remaining viable assets*." (Emphasis added.)
>
> * * * * *
>
> "174. At all relevant times, the Attorney Defendants [Morgan, Lewis & bockius] served as counsel for SNLIC, EBL Life and Stewart Entities simultaneously.
>
> "175. There existed clear conflicts of interest between and among SNLIC, EBL-Life and the entities with which they were engaging in sham transactions.
>
> "176. There were also conflicts of interest between the Stewart Entities and Stewart as an individual, as illus-

trated by the initial transaction whereby Stewart obtained SNLIC at no cost to himself and the transaction designed by Stewart to have SNLIC and/or EBL Life pay Stewart's residential mortgage.

"177. Nevertheless, the Attorney Defendants continued to simultaneously represent both SNLIC and EBL Life in many of the transactions set forth in detail above even though SNLIC's and EBL Life's interests were adverse to each other and to the other Stewart Entities represented by [Morgan, Lewis & Bockius], and even though the interests of all of the Stewart Entities were on their face and in reality adverse to the personal financial interest of ML&B's partner, Stewart."

* * * * *

"185. The Attorney Defendants' actions involved conflicts of interest due to the simultaneous representations of clients with differing interests. The Attorney Defendants' self-dealing also constituted an impermissible business arrangements with a client or clients. The Attorney Defendants' actions were to the detriment of their clients, SNLIC and EBL Life.

"186. *The actions and inactions of the Attorney defendants constitute legal malpractice.*

"187. Had the Attorney Defendants given SNLIC and EBL Life proper advice and assistance, SNLIC and EBL Life would not have participated in the various transactions that led to their initial and continuing insolvencies.

"188. As a direct result of the acts and/or omissions of the Attorney Defendants, SNLIC and EBL Life were rendered insolvent and continued to lose substantial asserts during the five years between 1988 and 1993 when both were owned and controlled by Stewart as a result of the various bogus transactions.

"189. *The conduct of the Attorney Defendants [Morgan, Lewis & Bockius] was intentional, wilful, wanton and/or reckless.*" (Emphasis added.)

19. Such unethical practices involving conflicting interests was intentionally participated in by the law firm of Morgan, Lewis & Bockius in violation of the professional rules of attorney conduct.

20. That the law firm of Morgan, Lewis & Bockius, and the partners who participated in the fraudulent scheme as set forth in the Pennsylvania Insurance Commissioner's complaint, have been permitted to continue to practice law without any restrictions, while I have been caused irreparable injury by the suspension of the availability of Mr. Wisehart to perform services as my counsel, as a result of a one time incident concerning the participation of Christopher A. Parlo who is a fact witness, is contrary to the public interest, in providing fairness in the administration of justice and contrary to my First Amendment and Due Process rights.

21. Further, the finding of the Appellate Division quoted at ¶ 80(d) of the amended verified complaint also makes defendants Parlo, Jacoby and Baer fact witnesses, namely that:

"It is unclear why and by whom the documents were placed in that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 x 6 foot [conference] table."

22. In addition, contrary to the false statement of the Court in its opinion, I did not have a full and fair opportunity to be heard, as shown by the Notice Demanding Trial dated July 23, 1992, concerning issues of disputed fact. (Exhibit H annexed hereto.)

23. In masterminding fraudulent activities so heinous as to constitute ongoing violations of the Racketeer Influenced and Corrupt Practices Act, as stated in paragraph 32 of the Insurance Commissioner's complaint, it is obvious that the

lawyers in Morgan, Lewis & Bockius were motivated by tremendous greed over a long period of time their wilful and wanton violation of ethical requirements in their practice of law.

24. New evidence of such "political payoff" received by Greig for his role as facilitator concerning the nomination and election of state court judges is documented in my affidavit sworn to December 31, 2001, annexed hereto as Exhibit I.

25. The following statements set forth in the letter of the undersigned dated May 28, 1999 to defendant Greig concerning news items, also is evidence of "political payback" that are not denied by defendant Greig. (Amd.Cmpt. ¶¶ 129-130.)

26. In addition, the opinion of the Court ignores, and fails to mention, the affidavits of the undersigned sworn to October 29, 2001, and December 31, 2001 (Exhibits J and I annexed hereto).

27. The opinion of the Court also ignores the disputed issues of fact raised in the reply affidavit of the undersigned sworn to November 30, 2000, and memorandum of law dated November 30, 2000 (Exhibit K annexed hereto), and in the notice of motion for injunctive relief, affidavit of the undersigned sworn to November 3, 2000, and the memorandum of law dated November 3, 2000 (Exhibit L annexed), and arbitrarily and capriciously states that "the Court need not address Plaintiff's motion for injunctive relief." (Op. 4)

28. The Court is respectfully requested to "address Plaintiff's motion for injunctive relief" dated November 3, 2000, and the affidavits of the undersigned sworn to October 29, 2001, and December 31, 2001, by vacating its opinion and order, and reinstating my amended verified complaint on the basis of the factual showing made in the affidavits of the undersigned submitted therewith.

29. Since the Court was required to consider and decide the motion for an injunction on the basis of the showing in said affidavits, which also requested findings and fact-specific discovery, the Court was required to convert defendants' motions to motions for summary judgment, but it did not do so.

30. Its procedural error therefore requires the Court to reinstate the complaint, and to vacate its opinion, order and judgment, particularly in view of the requests for findings and discovery concerning my 42 U.S.C. § 1983 claim.

31. Since the defendants' motions should have been considered as summary judgment motions, the disputed issues of fact raised in the reply memorandum of defendants Jacoby, Baer and American National Red Cross claiming that "Plaintiff's claims are interposed for the patently improper purpose of derailing state disciplinary proceedings from proceeding against plaintiff's attorney," and "defendants demonstrated their entitlement to an order enjoining plaintiff and her attorney from commencing any further litigation arising out of or relating to plaintiff's employment by the New York Red Cross or the conduct of prior litigation relating thereto" (WGM R.Mem. 11/17/00 at 6), require that the Court deny defendants' motion because they give rise to disputed issues of fact.

32. My affidavit sworn to October 29, 2001, requests that the Court take judicial notice of the fact that the Departmental Disciplinary Committee, Appellate Division, First Department granted permission to the undersigned to pursue legal action against Kevin P. Hughes, Esq., counsel for defendants American National Red Cross, Jacoby and Baer, on the basis of his false affidavit sworn to November 30, 1992, filed in the district court, and that the law firm of Weil, Gotshal & Manges should be disqualified for conflicts of interest on the basis that it had represented me in my capacity as a former officer of the American Red Cross in Greater New York, an

executive division of defendant the American National Red Cross in the Lattimore employment discrimination matter, an issue that is falsely described in the disputed documents. (Amd.Cmplt. ¶ 156)

33. My affidavit states (Aff. 10/29/01, ¶¶ 120-123, Exhibit J):

> "120. Defendants conceal that I filed disciplinary complaints against Weil, Gotshal & Manges attorneys Lawrence J. Baer and Mark A. Jacoby, and Kevin P. Hughes, Esq., in 1992. (Exhibit Y annexed hereto.)
>
> "121. I filed the complaints on the basis of the false July 3, 1991 personal knowledge affidavits of Baer and Jacoby, and the false affidavit of Kevin P. Hughes sworn to November 30, 1992, concerning issues of fact that was filed by him in his capacity as attorney of record in *Joan Carol Lipin v. American National Red Cross, American Red Cross in Greater New York, Robert M. Bender, Jr., Mary Stanton, Mark A. Jacoby, Lawrence J. Baer, and Jesse D. Wolff*, 92 Civ. 4455 (LBS).
>
> "123. Mr. Hughes also is the attorney of record in this litigation for defendants Lawrence J. Baer, Esq., Mark A. Jacoby, Esq., and American National Red Cross.
>
> "124. . . . . []The following letters of Hal R. Lieberman, Esq., former Chief Counsel, which state "Re: Matter of MARK A. JACOBY, ESQ., Docket No. 92.3858;" Re: Matter of LAWRENCE J. BAER., ESQ., Docket No. 92.3857;" and "Re: Matter of KEVIN P. HUGHES, ESQ., Docket No. 92.4658" (Letters dated 4/20/93, Exhibit Z annexed hereto) [state]:
>
> ". . . . *You may, . . ., pursue whatever remedies are available.*" (Emphasis added.)

34. Because Mr. Hughes also failed to disclose to this Court that Weil, Gotshal & Manges attorneys Jacoby and Baer, who were treated as in-house counsel by the American

Red Cross of Greater New York when the purported interview notes were constructed *after* the state litigation had commenced, and that that law firm also represented defendants American Red Cross in Greater New York, Robert M. Bender, Jr., and the American National Red Cross in that litigation from June 1989 to May 1990, which was prior to the notice of appearance by Morgan, Lewis & Bockius on behalf of defendant American National Red Cross on May 11, 1990, Mr. Hughes and his law firm should be disqualified in this case on the basis of impermissible conflicts of interest had been handled. See *Amgen v. Hoechst Marion Roussell, Inc.*, 190 F.R.D. 287, 293 (D.Mass. 2000); *Securities and Exchange Commission v. Cassano, et al.*, 189 F.R.D. 83, 85 (S.D.N.Y. 1999); *Aramony v. United Way of Am.*, 969 F. Supp. 226, 235 (S.D.N.Y. 1997); and *In re Grand Jury Proceedings*, 219 F.3d. 175, 188 (2d Cir. 2000).

35. Accordingly, this Court is respectfully requested to consider and make findings with respect to disputed issues of fact concerning the disqualification of the Weil, Gotshal & Manges, and Morgan, Lewis & Bockius lawyers (Not.App. 9/28/01, Exhibit T annexed hereto):

> "(11) That counsel for defendants Jacoby, Baer, and Parlo should be disqualified on the basis of impermissible conflicts of interest and acts of trickery by big firm attorneys in furtherance of their pattern or practice of assisting their clients in ruining the health and careers of victims of discrimination like myself and Edward Talvy by retaliating against them (Third Amended Complaint annexed hereto as Exhibit H)."

36. In addition, the district court's statement that "Plaintiff has worked on the *Polin* matter as a paralegal for Wisehart's practice," and that "The panel had based its decision to impose the sanction on what it held was proof that Wisehart had. . . ," (Op at 17), are absolutely false and not supported by the record in the *Polin* matter.

37. Further, the statement of this Court that the "*Polin* Court 'flatly rejected' Plaintiff's and Wisehart's "'defamation described claims' against defendants Parlo and Wall" (Op. 17), also is not correct because in *Polin* the court did not conduct a hearing or make determinations concerning the deceitful and defamatory statements of defendants Parlo and Wall.

38. The Court's reliance upon the statement that "Under New York law, "'in the context of a legal proceeding, statements by parties and their attorneys are absolutely privileged, if, by any view, or under any circumstances, they are pertinent to the litigation'" (Op 17), also is not correct as a matter of law. The privilege rules applicable in this litigation are governed by federal law, not New York law.

39. Under federal law, any claim of privilege would have been waived by virtue of the conduct of attorneys who were present from Weil, Gotshal & Manges and Morgan, Lewis & Bockius including defendants Baer and Parlo. *Amgen v. Hoechst Marion Roussell, Inc.*, 190 F.R.D. 287, 293 (D.Mass. 2000); *Securities and Exchange Commission v. Cassano, et al.*, 189 F.R.D. 83, 85 (S.D.N.Y. 1999); *Aramony v. United Way of Am.*, 969 F. Supp. 226, 235 (S.D.N.Y. 1997); and *In re Grand Jury Proceedings*, 219 F.3d. 175, 188 (2d Cir. 2000).

40. The Court's statement that "Plaintiff's state court proceedings in *Lipin I* provided her with a full and fair opportunity to be heard. . . ." (Op. at 15), also is factually incorrect. The Notice filed by me demanding a jury trial in the New York Court dated July 23, 1992, has not been determined by any court.[1] (Exhibit H annexed hereto.)

---

[1] A Notice of Entry dated February 26, 1992, with the state court dismissal order dated January 9, 1992 and filed in the New York County Clerk's Office on January 27, 1992, which was attached thereto, was filed by the law firm of Weil, Gotshal & Manges. (Exhibit M annexed hereto.)

41. As shown by the Official Transcript, Justice Moskowitz herself acknowledged that I requested a jury trial on the issues presented (Tr 7/23/92, Exhibit N annexed hereto, p. 17, l.20):

> "THE COURT: *There is something about a jury trial.*" (Emphasis added.)

42. That no court has determined the motion for a jury trial on the issues is set forth at ¶¶ 39-41 of the affidavit sworn to October 29, 2001 (Exhibit J annexed hereto):

> "39. Justice (now Judge) Ciparick, who inherited the case after Justice Moskowitz recused herself for bias and prejudice, *denied* defendants' civil and criminal contempt motion (Order dated 12/28/92, Exhibit I annexed hereto).
>
> "40. *Judge Ciparick made the finding that there was no "use" of the documents by either myself or my attorney on the basis of the factual information set forth in my opposition affidavits sworn to November 11 & 23, 1992* and annexed hereto as Exhibit J. See also Exhibit C, p. 3, annexed hereto.) (Emphasis added.)
>
> "41. There are no statements by Judge Ciparick reversing her finding."

43. This Court therefore is required to reinstate the complaint and conduct a hearing on issues of fact since I never received a full and fair opportunity to be heard with respect to the claims asserted in the amended verified complaint at ¶¶ 30-34, 36(i), 38-54, 113, 142, 144, 170.

44. In addition, the factually unsupported and incorrect statements set forth in the first full paragraph at page 18 of the opinion have no relevance to the liability of defendants Parlo and Wall with respect to the subsequent false, deceitful and defamatory statements made in the *Polin* court, and in this Court.

45. The deliberate attempt by defendants and their counsel to retaliate against me by interfering and causing prejudice in this litigation for exercising my First Amendment Free Speech rights concerning "political payback" in the connection with the nomination and election of state court judges in itself is further evidence of subsequent acts of retaliation.

46. Accordingly, this Court is required to consider the evidence set forth in the affidavits sworn to October 29, 2001, December 31, 2001, and to consider the motion for injunctive relief, and the affidavits sworn to November 3, 2000, and November 30, 3000, as the basis of the meritorious § 1983 claim that is asserted in the verified amended complaint.

47. The reply memorandum of defendants Parlo and Wall dated November 17, 2000, on the basis of the disputed issues of fact contended by defendant Greig in his answering memorandum to the injunction motion, also raises disputed issues of fact.

48. Accordingly, because defendants' motions to dismiss were converted by Greig's denial of issues of fact asserted by the undersigned thereby raising issues of disputed fact the Court was required to determine defendants' motions as motions for summary judgment and not motions to dismiss.

49. The motion of defendant National Union Fire Insurance raises disputed issues of fact, because defendant Greig answered the injunctive relief with a request for expedited scheduling, and it too must be converted to a motion for summary judgment since footnote 2 of memorandum of law dated July 14, 2000, states:

> "For purposes of this motion only, National Union accepts as true the allegations contained in the Complaint."

50. Since defendant Greig answered the motion for injunctive relief thereby establishing factual issues in dispute, and because defendant National Union Fire Insurance Company

of Pittsburgh, PA, "accepts as true the allegations contained in the Complaint," the Court also should have decided it as a motion for summary judgment.

51. See paragraphs 148 and 169 of my amended verified complaint which assert (Exhibit D annexed hereto):

> "148. The malicious purpose and intent of defendants was and is to destroy plaintiff, her reputation as an employee, her present employment, her prospects for employment or career in the future and to incapacitate her attorney so that she will be unable to prosecute her claims in the future."
>
> * * * * *
>
> "169. Punitive or exemplary damages are requested in the amount of $5,000,000 or such greater amount as shall be required, in light of defendants' income and assets to deter each defendant, and those who may be induced to collude and conspire with them, from engaging in such reprehensible conduct in the future."

52. The motion for injunctive relief requested an Order pursuant to 28 U.S.C. § 2283, 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 42 U.S.C. § 1985(2) & (3), 42 U.S.C. § 1986, Article VI of the Constitution of the United States, and Rule 65 of the Federal Rules of Civil Procedure, (a) providing temporary and preliminary injunctive relief, and granting discovery, with regard to the proceeding initiated in the Supreme Court of the State of New York, Appellate Division, First Judicial Department, by virtue of a Notice of Petition dated August 1, 2000, and against defendant Arthur W. Greig, Denis McInerney, Acting Chairman, Departmental Disciplinary Committee, Thomas J. Cahill, Chief Counsel, Andral N. Bratton, Counsel, and all others in privity with, or acting in concert or participation with them, (b) imposing upon defendant Greig and his attorney, Carolyn Cairns Olson, Esq., liability for the excess costs, expenses and attorneys fees

reasonably incurred because of such conduct pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 1927. (Exhibit L annexed hereto.)

53. My affidavit sworn to November 3, 2000 contains a detailed factual showing implicating these attorneys in procuring the disciplinary proceeding that has never been denied, at paragraphs 52, 53, 62, 63, 64, 65, incorporated by reference herein. (Exhibit L annexed hereto.)

54. In addition, my reply affidavit sworn to November 30, 2000, contains a detail factual showing implicating defendant Greig as a co-conspirator concerning his conflict of interest which have never been denied, at paragraphs 3, 4(1)-4(7), 5, 6, 7, incorporated by reference herein.

55. The memorandum of law in opposition to defendant Greig's motion dated October 27, 2000, also sets forth a detailed factual showing that constitutional violations as a result of the malicious dissemination of false and defamatory statements about me, a non-party to the disciplinary action, that are contained in the Greig Report dated March 14, 2000. (Mem. at 47, Amend. Cmplt. ¶¶35(i), (j), 54, 82, 83, 112, 144, 146, 163.)

56. Further, at pages 19, 43 and 69 of the memorandum of law dated October 27, 2000, discovery is shown to be necessary with respect to the continuing retaliatory conduct by defendants and their intent to ruin my attempt to establish a new career in law since my chosen career in health services had been destroyed by the Red Cross defendant/attorneys, defendant American National Red Cross and defendant National Union Fire Insurance.

57. Defendant Greig admits in the Report that I had a valid claim against the Red Cross and Robert M. Bender, Jr., for entrenched sexual harassment.

58. However, since defendant Greig knows his own sources of income, and political power, and to protect his own

financial and political interests that are dependent upon the continuation of a system of political bossism in the nomination and election of New York State court judges, Greig himself is a co-conspirator in the continuing retaliatory scheme to silence and destroy my credibility forever because of his own involvement in the corrupt judicial selection system.

59. The Greig Report containing manufactured, false and defamatory statements about me that are not supported by the record, and the false charges stated therein, is substantial and material evidence in support of the allegations in my amended verified complaint concerning Greig's participation as a co-conspirator in defendants' scheme to annihilate my reputation, employment and career prospects in order to retaliate against me. (Amd.Cmplt. ¶¶ 36(i), 80(d), 82, 89, 98, 100, 137, 139, 143)

60. Of particular importance with respect to the circumstances with regard to the activities of defendant Greig including his involvement is discovery as requested in the request for an injunction. (Amd. Cmplt. ¶ 95, R.Mem.L. 11/30/00, Notice of Motion 11/3/00, Exhibits L and K.)

DISPUTED FACT ISSUES

61. Defendant Greig's answering memorandum of law dated November 17, 2000, falsely claims that he was not a party to the disciplinary proceeding and that I am unable to demonstrate irreparable injury. (Mem.L. pp. 2, 5)

62. Such contentions clearly give rise to disputed fact issues that are not subject to being decided on motions to dismiss or for summary judgment.

63. In addition, newly discovered evidence is in the "smoking-gun" affidavit of defendant Greig sworn to December 20, 2000, and filed in the New York State, New York County Courthouse in the *Friedman* litigation, Index

No. 500064/99, itself is evidence that Greig is a recipient of unlawful "political payback" from sitting judges in New York County, Bronx County and Kings County which he receives in the form of financial remuneration for services rendered. (Exhibit O annexed hereto.)

64. The "Affidavit Of Services Of Court Appointed Counsel For Gerald J. Friedman" sworn to December 20, 2000 by defendant Arthur W. Greig contains the following admissions (Exhibit O, ¶¶ 1, 7):

> "1. I am an attorney and counselor-at-law fully admitted to practice in the State of New York."
>
> * * * * *
>
> "7. I have been actively practicing law for 20 years in the areas of civil trial practices in general and guardianship proceedings and other fiduciary matters (mortgage foreclosure receiverships) in particular. I have previously participated as a lecturer in 1992, 1994 and 1997 at the New York County Lawyers' Association training classes (CLE) on Mortgage Foreclosure Receiverships and other fiduciary matters. I have previously served as retained Counsel for Petitioner in many Guardianship matters, *and have been appointed by Supreme Court Justices in New York County, Bronx County and Kings County to serve as Court Evaluator, Committee, Court Appointed Attorney for the AIP, Guardian ad litem, Special Referee, Referee in Foreclosure, and Mortgage Foreclosure Receiver in approximately 75-100 cases over the years. I was also a member for six years (1992-1998) of the Departmental Disciplinary Committee for the Appellate Division, First Judicial Department.*" (Emphasis added.)

65. Said affidavit of defendant Greig is substantial and material evidence concerning the receipt of political favors in his capacity as a Receiver and a Court Evaluator concerning

the assertions in the complaint and the discovery that was requested concerning his direct participation and facilitation of the nomination and election of judges.

66. Significantly concealed from the Court by defendant Greig in his affidavit sworn to December 20, 2000, and used by him to obtain his lucrative appointment from the judge involved in the *Matter of Friedman* is the disqualifying information that he (Amd.Cmplt. ¶ 36):

> "(a) Is Counsel for the Democratic County Committee, New York County whose leader is Hermann D. ("Denny") Farrell, Jr.;
>
> "(b) Has fiduciary duties to plaintiff in her capacity as an appointed member of the Democratic County Committee, New York County, by virtue of his position as Counsel to the Democratic County Committee, New York County;
>
> "(c) Is a Co-Chair of the Election Law Workshop that is sponsored annually by the New York Democratic Committee, New York County;
>
> "(d) Is a member of the Judiciary Committee of the Democratic County Committee, New York County;
>
> "(e) Has been the "Convenor," upon the recommendation of Denny Farrell, to the Democratic Judicial Convention for the 1st Judicial District, the Judicial District which includes the 77th Election District of the 73rd Assembly District to which plaintiff is, and has been, an elected judicial delegate, alternate, to the Democratic Judicial Convention, at which Democratic judicial candidates are nominated for the office of Supreme Court Justice;
>
> "(f) Is Co-Chair of the Law Committee of the Democratic County Committee, New York County; . . . ."

67. Also concealed from the Court by defendant Greig in the *Friedman* matter, stating that he "was a member for six years (1992-1998) of the Departmental Disciplinary Committee for the Appellate Division," is the fact that he continued to function for the Disciplinary Committee until March 14, 2000 and that he had been investigating a disciplinary matter involving my attorney and that he threatened certain imminent action in connection therewith. (Exhibit O, Aff. 12/20/00, ¶ 7.)

68. The fact that defendant Greig has engaged in deceit by attempting to hide such political positions and functions is shown by his concealment of such information in his affidavit sworn to December 20, 2000, in which he seeks attorney's fees as a Court Appointed Counsel in the *Friedman* matter, Index No. 500064/99, as stated above.

69. Defendant Greig cannot be said to be "functionally comparable" to a judge (Op. p. 12), because he is prohibited by the New York State Constitution from engaging in such functions.

70. Defendant Greig therefore does not have a basis for asserting the affirmative defense of either absolute immunity or quasi-judicial immunity for his threats and actions against me that are taken in furtherance of his political and monetary interests and in violation of my First Amendment Rights.

71. Also without any factual basis whatsoever in the statement in the Court's opinion that, "Wisehart could have easily have determined the success of Plaintiff's claims by determining the case law and considering the fact that many, if not all, of Plaintiff's claims were precluded." (p. 22)

72. The foregoing statement by the Court is false.

73. As a student enrolled in the course entitled Civil Rights Law at New York Law School starting at the beginning of this year, until February 18, 2002, when I was

forced to take medical leave because of Obstructive Lung Disease which I developed from the occurrences on 9/11, I certainly learned enough to know that the "likely success" of my claims was clearly *not* something that could be "easily determined" under applicable case law without examining the operative facts. (Exhibit P annexed hereto.)

74. The implication that Mr. Wisehart did not examine the applicable case law is contrary to the facts since there are 17 deepwell file folders of research materials weighing a total of approximately 141 pounds that show the extensive research efforts and consideration that was given to the applicable case law, to my direct knowledge, by Mr. Wisehart as well as two other lawyers, Stephanie Amin, Esq., and Jacqueline I. Williams, Esq.

75. Also given extensive consideration was a leading text in the field, Sheldon H. Nahmod, *Civil Rights and Civil Liberties Litigation, The Law of Section 1983*, which makes it clear that the applicability of the doctrine of qualified immunity in cases under 42 U.S.C. § 1983 entails a fact-intensive inquiry utilizing a fact-specific "functional" approach to ascertain, among other things, whether the person involved was in fact (a) a state official, (b) acting in an official capacity, and (c) insulated from political influence, an approach that "Of necessity, . . . implicates evidentiary considerations" of the kind of fact-specific approach that Court's opinion manifestly failed to permit, consider or make. See *Nahmod, supra*, §§ 8:11, 8:92, p. 8-277. See also, *Anderson v. Creighton*, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987).

76. Contrary to the statement at page 12 of the opinion, the "Departmental Disciplinary Committee ("DDC") [was *not*] chaired by defendant Greig. . . ."

77. The function of defendant Greig was only that of "Hearing Panel Chair."

78. The allegations against defendant Greig in his official capacity was not against him in his "official capacity as Panel Chairman of the DDC" (Op. at 12), and, as such, the Eleventh Amendment does not apply to defendant Greig is his official capacity.

79. Also contrary to the further statement at page 12 of the opinion, defendant Greig is *not* "immune for damages in his individual capacity with respect to his activities as Panel Chairman of the DDC," because, by his own admission as set forth in the affidavit sworn to December 20, 2000 filed in the *Friedman* litigation, he is not a "state official" having been terminated as a member of the Departmental Disciplinary Committee in 1998.

80. Further, in his capacity as Hearing Panel Chair, Greig also does not have "[a]bsolute quasi-judicial immunity" because he was not a "referee[]" and he was not a member of the Departmental Disciplinary Committee when he signed the false and defamatory Hearing Panel Report dated March 14, 2000.

81. Also, as shown by his own admission, defendant Greig did not have judicial authority as the Hearing Panel Chair when he stated the following on the record in the proceeding against my attorney on December 10, 1997 (Aff. 10/29/01, ¶ 103):

> "MR. WALL: If the Panel will bear with me—I was about to call you, Your Honor, I'm so—
>
> "CHAIRPERSON: *We're just a Panel.*
>
> "MR. WALL: I beg your pardon?
>
> "CHAIRPERSON: *We're just a Panel.*" (Emphasis added.)

82. Thus, contrary to the statement at page 12 of the opinion of the Court, the duties and actions of defendant Greig as Hearing Panel Chair was not "'functionally comparable' to the duties and actions of judges."

83. Defendant Greig cannot be constitutionally regarded as being able to provide due process under the holding in *Tumey v. Ohio*, 273 U.S. 510, 524 (1927), and the partisan political interests in which he actively promotes which translate into lucrative pecuniary interests and "soft money" that has developed among the partisan judicial deal makers makes *Tumey v. Ohio* applicable when it states (273 U.S. at 532):

> ". . . the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self_sacrifice could carry it on without danger of injustice. *Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.*" (Emphasis added.)

84. Further, the constitutional right to an impartial forum as a requisite of due process to protect individuals from the bias that inevitably results from an attorney's partisan political activities involving the receipt, solicitation and allocation of campaign contributions in judicial campaigns is well settled. See Mark Andrew Grannis, Note, *Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum: A Due Process Approach to Improprieties Arising from Judicial Campaign Contributions from Lawyers*, 86 Mich. L. Rev. 382, 418 (1987).

85. As Hearing Panel Chair, defendant Greig was not able to accord due process in view of the prohibitions in the New York Constitution.

86. Greig therefore cannot be considered to be a judge, or performing the functions of a judge.

87. *The judicial function in New York may be performed only by a judge who is elected or appointed pursuant to the New York Constitution, Art. VI, §§ 6(c), 20(b) (McKinney 1997).*

88. Greig therefore was not qualified to perform the judicial function, nor were the two other members of the Panel.

89. Defendant Greig also was precluded from functioning in the capacity of a New York judge in view of the applicable prohibitions in Section 20 of Article VI of the New York Constitution because under them a New York judge may not (N.Y. Const. Art. VI § 20(b)(3),(4) (McKinney 1997)):

> "(3) hold any office or assume the duties or *exercise the powers of any office of any political organization* or be a member of any governing or executive agency thereof;
>
> "(4) engage in the practice of law, *act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his judicial duties.*" (Emphasis added.)

90. It is undisputed on the record that because Greig holds office in, and also has assumed the duties or exercises the powers of a political organization, he is disqualified under the New York Constitution from acting in a judicial or quasi-judicial capacity.

91. As alleged in my amended verified complaint, Arthur W. Greig is active in exercising the powers of various offices in a political organization, and also involved in actively practicing law, and it is undisputed on the record that (i) Greig is Counsel for the Democratic County Committee, New York County whose leader is Assemblyman Hermann D.

("Denny") Farrell, Jr.; (ii) Greig is a Co-Chair of the Election Law Workshop sponsored annually by the New York Democratic Committee, New York County; (iii) Greig is himself a member of the Judiciary Committee of the Democratic County Committee, New York County; (iv) Greig has been appointed the "Convenor" to the Democratic Judicial Convention for the 1st Judicial District, the Judicial District which includes the 77th Election District of the 73rd Assembly District to which plaintiff Lipin is, and has been, an elected judicial delegate, alternate, to the Democratic Judicial Convention, at which Democratic judicial candidates are nominated; (v) Greig is Co-Chair of the Law Committee of the Democratic County Committee, New York County; and (vi) As shown in the public record also, Greig receives and holds lucrative appointments as a referee or receiver from which he receives large amounts of compensation in judicial proceedings. (Exhibit D, Amd. Complt. ¶¶ 36, 104, 132)

92. Further, qualified immunity is not applicable to defendant Greig not only because of his disability to function in a judicial capacity under the Constitution of the State of New York as shown above, but because he was not a member of the Departmental Disciplinary Committee or a referee or a state official of any kind. See *Richardson v. McKnight*, 521 U.S. 399, 138 L.Ed.2d 540, 117 S.Ct. 2110 (1997).

93. In addition, 42 members of the Disciplinary Committee, like defendant Greig, are neither elected employees by voters nor are they state officials. On the contrary, they are lawyers who are self-employed, professors of law, or partners in law firms with independent sources of income.

94. As such, they are subject to liability along with defendant Greig for treble damage liability for conspiracies in restraint of trade under the antitrust laws. 15 U.S.C. § 1.

95. That such unlawful restraints of trade are subject to enforcement through state authorized disciplinary proceedings is no basis for application of the immunity doctrine. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 781-2 (1975).

96. As a consumer of legal services, I have standing to sue to recover for injuries caused by lawyers that are competitors of my attorney to restrain trade and to make it impossible for him to continue to represent me, and the doctrine of qualified immunity has no application.

97. I also have standing to sue for recovery by lawyers who have destroyed my interest in property as established by the Masters in Business Administration with a concentration in health care that I was awarded in 1977, thereby making me a competitor of defendant American National Red Cross, and for injury to future interest in property as established by the intended award of a Juris Doctor degree in the law which will enable me to be a competitor of the named attorney defendants herein and the other co-conspirator attorneys who have engaged in conduct in furtherance of the retaliatory conspiracy against me.

98. As stated in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972):

> "There are many . . . forms of illegal and reprehensible practices which may corrupt the administrative or judicial process which may result in antitrust violations."
>
> * * * * *
>
> "It is well settled that First Amendment rights are not immunized from regulation when they are used as an integral part of conduct which violates a valid statute."

99. Such illegal restraints of trade include unethical conduct in the setting of the adjudicatory process when, as here occurred, the purpose is to exclude the competitor, my attorney, from the market for his services (404 U.S. at 512),

and indirectly to exclude me as a future competitor because, without employment, I will not be able to financially afford the law school tuition, and, because of the vindictive sanction of $3,000 awarded in favor of the very defendants who have injured me, that this Court arbitrarily and capriciously has imposed upon me.

100. Directly applicable to such unlawful acts is the conspiracy which defendant National Union Fire Insurance "accepts as true" since it is "alleged in the complaint" at paragraphs 137-145, including the destruction of my ability to obtain effective legal representation by the destruction of my attorney and my employer. (Amd.Ver. Complt. ¶¶ 143-44.)

101. Said attorneys seek to, and have conspired to restrain trade on their own interests by conspiring to assure themselves that civil rights plaintiffs will never be able to secure competitive representation in such litigation unless they are financially able to hire large firm attorneys at billing rates that are sufficient to cover the salaries that they pay to inexperienced beginners of over $100,000 per year with profits to partners in the range of $1,000,000 per year or more financial by "duty to defend" claims in their insurance policies in order to resort to litigation by attrition strategies and related tactics used to destroy small firms such as WISEHART & KOCH who are forced to perform their services for financially impoverished victims of civil rights violations and discrimination.

102. The destruction of such small law firm lawyers and/or solo practitioners and the elimination of services by the big firm defendants in this litigation, as financed by their clients, through fees and political contributions is considered to be a major objective by the insurance companies who pay their exorbitant bills.

103. As shown in Greig's affidavit sworn to December 20, 2000, he was *not* a member of the Departmental Disciplinary Committee at the time the Report was written on March 14, 2000. (Exhibit O, Aff. ¶ 7.)

104. Having gone off the Committee in 1998, Greig was a private person acting under color of state law when the Report was signed by him and issued.

105. Based upon his status as chair of a hearing panel, even if defendant Greig were considered to have standing to claim quasi-judicial status, notwithstanding the contrary provisions in the New York Constitution, it is clear that not all of his actions would result in immunity.

106. In addition, under *United States v. Lanier*, 520 U.S. 259, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997), a state judge who had sexually assaulted five women, while ostensibly acting in his capacity as a judge, was held not to be immune from such act.

107. Defendant Greig must also be deemed to have known that he was not capable of performing a judicial function under the Constitution of the State of New York, as shown in the Memorandum of Law dated October 27, 000, previously submitted on my behalf at pages 7 through 27.

108. Violation of my constitutional liberty interests was properly set forth in paragraphs 60-67 of my amended verified complaint.

109. In view of these specific constitutional provisions, defendants' conduct cannot be considered to be objectively reasonable. See *Reckson Operating Partnership v. New York State Urban Development Corp.*, S.D.N.Y. 01-CV-1249 (KMW) Mar. 25, 2002, pp. 10-11 (Exhibit Q annexed hereto), particularly in view of the admission in the Greig Report that, with respect to an issue that involved "seemingly a matter of first impression," with respect to "a matter for which there is

little clear precedent," my liberty interests have been violated in causing "a tragedy of epic proportions" to me. (Amd. Ver. Comp., ¶¶ 67-75, Exhibit D.)

110. The language of 18 U.S.C. § 241, which is applicable to the defendants and their attorneys and other co-conspirators, states:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or. . . ."
>
> * * * * *
>
> "They shall be fined under this title or imprisoned not more than ten years, or both. . . ."

111. Defendant Greig's report admits knowledge on his part that the Chief Executive Officer of the New York Red Cross had sexually assaulted myself and two other female Red Cross employees of the Red Cross, yet seeks to justify ruining my own career, health, employment opportunities and incapacitating my counsel, despite his admission that what had occurred resulted in a "tragedy of epic proportions."

112. The fact that the male sex maniac still maintains his exalted position in the Red Cross, pursuant to a cover-up facilitated by defendant Greig, while my prospects have been destroyed and my First Amendment Free Speech rights and right to petition have been blatantly violated by the imposition of sanctions and an injunction is surely strong evidence of the violation of 42 U.S.C. §§ 1983-1986.

113. Liability on the part of Greig exists under *Wyatt v. Cole*, 504 U.S. 158, 118 L.Ed 2d 504, 112 S.Ct. 1827 (1992) and *Richardson v. McKnight, supra.*

114. The claim for violation of § 487 of the New York Judiciary Law is also pleaded in my amended verified complaint at ¶¶ 2, 36(i) and 68 and is applicable to defendant Greig, but the Court's opinion does not mention this.

115. The further statement of this Court that the instant litigation merely involves the same claims as in prior litigation (Op. at 22, 23, 26) is incorrect.

116. This Court apparently was unable to make a comparison of the pleadings because the complaint in the prior litigation was unavailable because it was sealed by the Judge involved.

117. In any event, overlooked by the Court are the allegations in my present amended verified complaint that the actions of defendant Greig and those co-conspirators who aided and abetted him in connection with the disciplinary proceeding against my attorney, and its aftermath, were maliciously intended to block a hearing and my ability to be represented in this litigation, as well as to destroy my present employment and livelihood, and my future career prospects as well (Amd. Complt. ¶¶ 144, 145, 148, 149), as part of a continuing pattern or practice of destroying the careers, health and reputations of citizens charging employers with unlawful civil rights practices (¶¶ 150-159, 165-66), and their attorney is threatened by or incapacitated as a result of disciplinary proceedings (¶ 148), so that effective representation is either negated or destroyed, and justice obstructed so that a determination of such claims on the merits can never be obtained. (Exhibit L, Aff. 11/3/00, ¶¶ 35-53.)

118. The inconsistency between the punitive action maliciously used to incapacitate my attorney (and employer) in a further attempt to retaliate against me on the basis of the supposedly "privileged" documents that had been placed

before me is shown by the following statement by Justice Moskowitz that (Exhibit L, Aff. 11/3/00, ¶ 54):

> "I don't even see anything in these papers in relation to this lawsuit."

119. As stated in my same affidavit, which obviously was not considered by the Court (¶¶ 56-60):

> "56. The Greig Report reiterates the "romantic involvement" platitude at p. 5:
>
> > "The documents also recited details of defendant Bender's romantic involvement with one Fletcher and one Clingman, who were present and/or former female employees of defendant Red Cross, thereby supporting certain elements of Lipin's sexual harassment claim."
>
> "57. That Greig's "romantic involvement" version of what occurred is fiction is shown by the documents themselves, as admitted by Bender, the Red Cross executive himself, and also by what I personally observed.
>
> "58. Rather than being "romantic," the relationship between Bender and his harem involved gross and disgusting displays of pure raw, unadulterated sex, going far beyond the Monica Lewinsky scandal, conducted by the Chief Executive of the New York Red Cross who, instead of being disciplined or reprimanded, was later promoted to being an advisor to Elizabeth Dole when she was President of the Red Cross and joining in the hue and cry against an impeached President who had defeated her husband in the prior election.
>
> "59. If defendant Greig had access to the documents, as appears from his report, based upon his fictitious description of a "romantic" involvement they were given to him on an *ex parte* basis.

> "60. Totally ignored by defendant Greig while he was obsessing about Bender's "romantic" involvement were the offensively defamatory statements prominently displayed in the documents ("dangerously crazy") that could not possibly be regarded as privileged of the kind used by Hitler and his cronies as a pretext for ridding himself of the Jews as political opponents by sending them away to concentration camps and gas chambers in Germany during the Nazi period."

120. Further, the incorrect statement by the Court that "Challenges to the Panel Report may, and should, be addressed by the Appellate Division" (Op. 13), is arbitrary and capricious because the undersigned, who is not a lawyer, was *not* a party to the disciplinary proceeding.

121. The Appellate Division did not have jurisdiction over the me, a non-lawyer, and the undersigned was unable to challenge the Greig's "Panel Report.

122. Further, since I was not a party to the disciplinary proceeding commenced against my attorney and I have no standing to appeal to the Supreme Court of the United States, and contrary to the incorrect statement in the opinion, I do not have standing to make "Challenges to the Panel Report" to the Appellate Division. See *Cowan v. Codella*, 149 F.Supp. 2d 67 (S.D.N.Y. 2001), concerning a disciplinary proceeding of one party and a federal court action of another party) which states in pertinent part:

> "In this case, Mr. Cowan was not a party in the State Court Action, his interest are different from Ms. Cowan's and his interests were not fully represented by Ms. Cowan in the State Court Action."
>
> * * * * *
>
> "Neither of the plaintiffs had any power to seek review of the Departmental Disciplinary Committee's decision in the United States Court."

123. Conversely, the Court's statement that "Plaintiff and her attorney were acting as co-litigants" in this litigation also is incorrect and violative of my due process rights and does not apply under *Cowan, supra.* (Op. 26)

124. See *Khandhar v. Elfenbein*, 943 F.2d 244, 249 (2d Cir. 1991); see also 57 N.Y.Jur.2d, "Estoppel, etc.," §§ 39, 60 and 75.

125. Accordingly, collateral estoppel does not apply, and it is respectfully requested that the Court vacate its opinion and reinstate the amended verified complaint.

126. Under the New York City Human Rights Law (§ 8-107 ¶ 7), a finding of liability against the employer is not specifically required in order for retaliation liability to be imposed against individuals. Under the NYCHRL, retaliation liability applies "to any person engaged in any activity to which this chapter applies," not just the employer. "Person" is defined in Section 8-102 ¶ 1 to include "one or more mature persons" and even "legal representatives." Moreover, it is an unlawful practice "to retaliate in *any manner*" (emphasis added) "against any person because such person" has merely "filed a complaint, testified or assisted in any proceeding under this chapter," or "commenced a civil action" only "alleging the commission of an act which would be an unlawful discriminatory practice under this chapter. . ." (NYCHRL § 8-108 ¶ 7), or simply aiding and abetting such acts, or attempting to do so. (§ 108-7 ¶ 6)

127. Findings of discrimination by the employer therefore are not a condition precedent for liability for subsequent retaliatory acts by individuals as are here alleged.

128. This claim was not and could not have been asserted in the prior litigation in this court.

129. The Court therefore erred in applying collateral estoppel to the detailed allegations of retaliation by the individual defendants in the amended verified complaint in this litigation.

130. As a consequence, the Court's opinion dismissing the complaint and imposing sanctions and an injunction on the basis of collateral estoppel to a proceeding in which I was not a party "does not sufficiently protect [my] due process right to have [her] constitutional claims fully and fairly adjudicated in a judicial forum" in an Article III court, and also does not "provide the full range of relief sought by [the undersigned in her] federal court action," including the right to trial by jury. *Coppinger v. MetroNorth Commuter R.R.*, 861 F.2d 33, 39 (2d Cir. 1988).

131. Shortly after the Petition dated August 1, 2000 was filed in the Appellate Division, First Department, Mr. Wisehart retained Michael S. Ross, Esq., to represent him in the disciplinary proceeding. (Exhibit L & K, Aff. 11/3/00; Aff. 11/30/00.)

132. That the defendants and their attorneys also conspired with Michael S. Ross, Esq., is shown by his threats of blackmail and extortion made in person to me and my attorney on October 17, 2000.

133. On October 17, 2000, to my direct and personal knowledge, Mr. Ross, after he had demanded and received a retainer fee up front in the amount of $15,000 from Mr. Wisehart on September 8, 2000, demanded that Mr. Wisehart withdraw my amended verified complaint despite the fact that I declined to give him permission.

134. Mr. Ross' threats were made with full knowledge that the basis of the contractual agreement with Mr. Wisehart was that his firm, LaRossa & Ross, would represent him "in connection with the submission on [his] behalf of a Motion to Disaffirm the Disciplinary Committee's now-pending motion

[the Petition dated August 1, 2000] in the Appellate Division in the First Department, to impose disciplinary sanctions upon [him]." (Ross Ltr. 9/8/00, Exhibit R annexed hereto.)

135. The threat of Mr. Ross that he would breach his contract with Mr. Wisehart unless he withdrew my complaint contrary to my desire is evidence that Ross himself is a co-conspirator.

136. Prior to the meeting on October 17, 2000, Mr. Ross had received and read a copy of the Petition and my amended verified complaint.

137. I was present at the meeting in my capacity as the plaintiff in this litigation and client of Mr. Wisehart.

138. At the outset of the meeting, Mr. Ross stated in an intimidating, and aggressively hostile voice that unless Mr. Wisehart "withdrew Lipin's complaint he could guarantee that the Appellate Division would enhance the recommended three month suspension sanction against him."

139. Such statement by Ross itself is evidence of improper *ex parte* communications and is evidence that he is a co-conspirator.

140. The threat of Mr. Ross concerning my complaint also is evidence of extortion. 18 U.S.C.A. § 1951 makes it a crime to interfere with commerce by threats of physical violence or extortion which is defined as obtaining property of another by wrongful use of actual or threatened force, violence, or fear.

141. Ross' statement caused me to fear what might happen to my attorney, myself, my employment, and my pending federal complaint.

142. Since Mr. Wisehart was ethically bound not to violate his professional responsibility to his client, the undersigned, he stated to Ross that he would not withdraw my amended verified complaint pending in this Court.

143. The threats of co-conspirator Ross also constituted acts of blackmail and extortion against me because such acts were violative of my interest in property as the plaintiff in this pending action, and further evidence of defendants' and their attorneys' obstruction of justice to deprive me of my constitutional rights of access to the federal courts and to petition for a redress of grievances, to freedom of speech, to due process, to equal protection, and to my privileges and immunities regarding the allegations set forth in my amended verified complaint.

144. Further evidence of the continuing conspiracy to retaliate against me is shown by the following admissions by Ross made in my presence on October 17, 2000, namely:

(a) that his livelihood is dependent upon litigating disciplinary cases; and

(b) that he is actively involved as a trainer for lawyers who practice before the Departmental Disciplinary Committee concerning the new disciplinary procedures that became effective on or about January 1, 2000, which did away with the Hearing Panel procedure.

145. The further admission that Ross was aware of the determination of the Appellate Division to impose "greater sanctions [against Mr. Wisehart] due to the filing of the Lipin complaint [Exh. F]" also is evidence of the continuing retaliation against me for which collateral estoppel does not apply.

146. Mr. Ross also admitted that "inexplicable" information contained in the Greig Report dated March 14, 2000, comes from the disputed documents, and that this "raises questions" as to *ex parte* communications.

147. In addition, Mr. Ross admitted that "any lawyer" who fed such material to the Panel "would result in disbarment," and that if such *ex parte* communications had been permitted to be proved, the Greig Report dated March 14, 2000 and the

decision of the Appellate Division dated March 8, 2001 would be vacated on the basis that they were obtained by means of impermissible corruption, misconduct and commission of crimes on the part of the co-conspirators and named defendants herein pursuant to 18 § 241.

148. Although Mr. Ross promised to take the matter up with Mr. Cahill, the Chair of the Departmental Disciplinary Committee, instead, he abruptly filed a motion dated October 25, 2000, to withdraw as counsel for Mr. Wisehart virtually on the eve when his response was due to be filed in the Appellate Division. (Aff. 11/3/00, Exh. D attached thereto.)

149. I am, and continue to be, the real target of the proceeding instigated in secret against my attorney also is shown by the threat made by co-conspirator and defendant Greig in a telephonic conference call on November 4, 1998.

150. Notwithstanding an undisputed showing on the record that the documents had been held only temporarily so that I could obtain legal advice, and that the court found that the information set forth therein had not be used and, according to Justice Moskowitz's statement that (Exhibit J, Aff. 10/29/01, ¶¶ 81, 91):

> "I don't even see anything in these papers in relation to this lawsuit,"

defendant Greig nevertheless maliciously threatened me subsequently in a telephone call made in the presence of others by stating that

> "*You will have to face up to what you did sooner or later.*"

150. I understood Greig's threat to mean that my present and future interests in property would be destroyed in retaliation for attempting to expose the "political payback" process that is operative in the nomination and election of New York state court judges from which he lucratively benefits.

2. Greig's threat to me was made in retaliation in part because Staff Counsel Bratton failed to impeach my testimony, and because I exercised my free speech First Amendment rights relating to matters of great public concern. It was intended to, and did, cause continuing fear, terror, trauma, and emotional distress.

1. On October 27, 2000, I filed an application to Show Cause in support of why a stay and preliminary injunction should not be issued to enjoin threatened proceedings in the Supreme Court of New York, First Judicial Department, under the Notice of Petition dated August 1, 2000, that would interfere with the jurisdiction of this Court in the above entitled litigation. (Exhibit S annexed hereto.)

2. Stephanie D. Amin, Esq., brought the show cause application to the Court and was instructed to remain the outer office for about one and a half hours.

3. Your Honor denied the application for an expedited scheduling and said instead (Exhibit S):

> "ORDERED, that the foregoing *ex parte* application for expedited scheduling of briefing and a hearing on plaintiff's request for a *temporary and preliminary injunctive relief is denied, without prejudice to renewal of the requests for injunction relief, &/or for expedited scheduling thereof*, in accordance with the applicable Federal Rules of Civil Procedure, Local Rules of Court, and individual Practices of the undersigned." (Emphasis added.)

4. The renewed request for preliminary and temporary injunctive relief was filed on November 3, 2000. (Exhibits L & K annexed hereto.)

5. The equitable relief requested therein was based upon the Court's jurisdiction in 28 U.S.C. § 2283, under which injunctive relief may be granted to enjoin or to stay proceed-

ings in the State Court "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

6. Such injunctive relief was necessary to give effect to my rights under 42 U.S.C. § 1986.

7. The future irreparable injury that was predicted to be caused or threatened to be caused was the direct interference by defendant Greig, as a co-conspirator with the others, including the named defendants herein and their attorneys, with the jurisdiction of this Court by means of a suspension order of the Appellate Division in a disciplinary proceeding against my attorney, which did not and legally could not implicate me, with intent and motive to engage in continuing retaliatory conduct to (a) destroy my reputation, (b) my interest in property for exercising rights protected by the Constitutional and federal law, (c) my economic livelihood, and (d) my right to obtain a law degree for the purpose of practicing law as a second career since defendants had destroyed my chosen career of health care.

8. Instead, however, the Court left the motion undecided and did not consider the motion for injunctive relief for one and a half years, then dismissed the case on March 28, 2002, and stated "the Court need not address Plaintiff's motion for injunctive relief" (Op. 4), even though I had been ordered by the Court to show why the injunctive motion was not moot.

9. By Order of this Court dated August 15, 2001, I was directed "to enter a notice of appearance by new counsel or *pro se*" and (b) to show "why [my] November 3, 2000 motion for injunctive relied should not be denied as moot." (Exhibit J, Exh. A annexed thereto.)

10. The Order continues at page two and states:

> "ORDERED, that failure to comply with the requirements of this order will result in a dismissal of Plaintiff's case without further notice for failure to prosecute. . . ."

11. On September 28, 2000, I filed a Notice of Appearance. (Exhibit T annexed hereto.)

12. By further Order dated October 4, 2001 (Exhibit J, Exh. A annexed thereto), this Court states:

> "WHEREAS, on August 15, 2001, the Court issued an order directing Plaintiff to appear by new counsel or pro se within 45 days from the date of the order, and Plaintiff has filed her notice of appearance pro se; and
>
> "WHEREAS, all pending motions in this case are fully submitted, *with the exception of plaintiff's submission*, due within 60 days from the date of the August 15, 2001 order, *as to why her November 3, 2000 motion for injunctive relief should not be denied as moot*, it is hereby
>
> "ORDERED, that the pre-trial conference scheduled for October 19, 2001 is adjourned *sine die* and all motions are taken on submission."

13. Because the complaint is verified, the allegations set forth therein must be taken as true, and all reasonable inferences must be drawn in favor of the plaintiff when determining motions to dismiss.

14. On a motion to dismiss, the court merely determines whether the complaint itself is legally sufficient, it does not weigh the evidence that might be presented at trial.

15. By virtue of its own Orders dated August 15, 2001 and October 4, 2001, directing that the undersigned to make a submission showing why the temporary and preliminary injunctive relief motion dated November 3, 2000, was not moot, and on the basis of the answering memorandum of law of defendant Greig raising disputed issues of fact, as set forth above, the Court itself converted defendants' motions to dismiss into summary judgment motions.

16. The Court, therefore, was required to dispose of defendants' motions pursuant to Rule 56 of the Federal Rules

of Civil Procedure and not arbitrarily and capriciously by dismissing the case by ignoring fact specific requests for discovery and findings and remaining silent with respect thereto as shown in its opinion and order dated March 28, 2002.

17. Accordingly, this Court is required to reinstate the complaint and issue an order granting the undersigned to proceed with the request for discovery and findings.

18. Further, a disputed issue of fact is whether collateral estoppel is applicable against a non-party, who is a non-lawyer and not subject to the jurisdiction of either the Appellate Division, First Department, or the First Judicial Department Disciplinary Committee, with respect to an order of suspension against her attorney is a question of fact that cannot be resolved on a motion to dismiss.

19. In addition, because I was compelled to become a *pro se* plaintiff by the Court, the Court must be mindful that my submissions should be held to less stringent standards than a lawyer's formal pleading.

20. The Court is required to make reasonable allowances to protect my rights so that they will not be forfeited by virtue of my lack of legal training.

21. Further, because I was not permitted to obtain substantive assistance as a *pro se* litigant, I devoted in excess of 200 hours to construct the responsive affidavit sworn to October 29, 2001, required by the Court or else my case would be "dismissed," to the detriment of my health.

22. Said Orders of the Court were unreasonable as well as cruel and unusual punishment particularly in view of the fact that the undersigned previously had brought to the attention of the Court that I am an evening law student with full-time employment, and that because of the cause and effect of the trauma associated with the catastrophic attack of 9/11, and

that I was experiencing a re-occurrence of Post-Traumatic Stress which had been diagnosed as Post-traumatic Stress Disorder and Major Depression by Stanley L. Portnow, M.D., in the Report and Evaluation dated July 14, 1990, which states (Not. App., ¶ 13, Exhibit T):

> "'1. Ms. Joan Lipin suffers from (a) Post-traumatic Stress Disorder and (b) Major Depression.
>
> "2. The above described sexual harassment of Ms. Lipin by Mr. Robert Bender was the proximate and casual factor in the development of the two above named psychiatric conditions."

23. As graphically described in sworn deposition testimony and affidavits, Robert M. Bender, Jr., Chief Executive Officer of the New York Red Cross, is a sexual predator who continues to be permitted by defendant American National Red Cross to terrorize and psychologically rape female Red Cross employees, including myself, a former Officer of the Red Cross.

24. The cause and effect of the trauma inflicted upon me by the Court's Orders dated August 15, 2000 and October 4, 2000, by having to represent myself in responding to said Orders or have the case dismissed, is shown by the fact that my immune system has been compromised, and I recently I was diagnosed with Obstructive Lung Disease, and, on the advice of my physician, I was required to obtain a Medical Leave for the Spring Semester 2002 from New York Law School. (Exhibit P annexed hereto.)

25. The Order of this Court dated March 28, 2002, states that it "need not address Plaintiff's motion for injunctive relief" (p. 4), even though the undersigned requested findings and discovery.

26. Further, my amended verified complaint asserts violations of Section 487 and libel by defendant Arthur W. Greig, in his individual capacity as shown at paragraphs 2, 36(i), 68.

27. The arbitrary and capricious opinion dated March 28, 2001, however, is silent concerning the fact that defendant Greig is also sued in his individual capacity and as such is liable for deceit by him committed against me under Section 487 of the New York Judiciary Law. (¶¶ 2, 36(i), 68.)

28. Further, the Court incorrectly identifies defendant Greig as "Chair of the state court disciplinary committee." (Op. 7.)

29. As shown by the Greig Hearing Panel Report dated March 14, 2000, Greig was only "Chair" of the ad hoc "Hearing Panel."

Further, the Court has it wrong when it states the undersigned's claims set forth in the Second Claim for Relief challenge "the suspension order" of Arthur M. Wisehart (Op. at p. 10), and ignores that the second claim for relief is pursuant to 42 U.S.C. §§ 1983, 1985, 1986 and 1988, and that the third claim for relief is for continuing retaliation (¶¶ 147-169, and states at ¶¶ 161-169:

> "160. On July 12, 1999, plaintiff made a further application for employment at the Red Cross but said application did not receive any consideration or a response of any kind.
>
> "161. Each an every defendant was and is aware that plaintiff was engaged in protected activity by making and prosecuting her claims and charges.
>
> "162. Each and every defendant was and is aware that plaintiff's charges had substantial merit.
>
> "163. Each and every defendant was and is aware that plaintiff was and is irreparably injured by their retalia-

tory actions, and that the effect of what occurred has been to result in what the Greig Report dated March 14, 2000, found to be a "tragedy of epic proportions" causing irreparable injury to plaintiff, her person and her property, yet said defendants, despite such knowledge, have failed and refused to take any remedial action with respect thereto because each and every defendant maliciously did and does continue to intend to inflict upon plaintiff a "tragedy of epic proportions" both now and into the foreseeable future.

"164. There is a causal connection between said adverse actions by defendants and each of them and the protected activities of plaintiff as alleged above.

"165. Said continuing adverse retaliatory actions were committed by defendants and each of them under an ongoing policy of discrimination and retaliation under which victims of discrimination and retaliation who object are destroyed, and under which any remedial action is blocked and sabotaged, as here, and its perpetrators such as plaintiff's former supervisor Robert M. Bender, Jr., were, are and continue to be promoted, rewarded and falsely extolled as a role model by an eminent not-for-profit organization that creates and utilizes the false and fraudulent image of personnel probity as a basis for the solicitation and donation of huge sums of money from the public.

"166. Defendants' unlawful acts causing injury to plaintiff were willful and wanton, committed with personal malice and hostile animus toward plaintiff, a person who has exercised her free speech and constitutional rights in deliberate violation of law and public policy, and/or reckless disregard for the rights of plaintiff.

"167. Plaintiff is a person aggrieved by unlawful retaliatory practices perpetrated by defendants and entitled to

commence a civil action pursuant to Section 8-502 of the amended Human Rights Law of the City of New York for the judicial remedies provided thereunder.

"168. Said retaliatory acts of defendants also are violative of the Human Rights Law of the City of New York, N.Y.C. Admin. Code § 8-107, *et seq.*

"169. Punitive or exemplary damages are requested in the amount of $5,000,000 or such greater amount as shall be required, in light of defendants' income and assets to deter each defendant, and those who may be induced to collude and conspire with them, from engaging in such reprehensible conduct in the future."

30. A co-conspirator will be liable for the acts of a fellow conspirator for actions that are committed in furtherance of the objectives of the conspiracy that are foreseeable.

31. The chain relationship of the overall conspiracy here involved to destroy my reputation and standing in any community as an upright citizen, my ability to secure an economic livelihood, and my ability to rehabilitate myself by developing a second career in the law because my M.B.A. degree and interest in property in health services had been destroyed by defendants' continuing acts, is shown by the admitted disputed issues of fact set forth in the answering memorandum of law dated November 17, 2000, and filed in this Court by defendant Greig.

32. Conspiracy is considered to be a particularly dangerous crime because the division of labor involved in a conspiracy is much more likely to achieve its criminal objective than if the named defendants herein were acting alone.

33. Because evidence of the agreement to conspire based upon circumstances relating to the bizarre factually manufactured Greig Report dated March 14, 2000, and because of the disputed fact issues raised in Greig's answering memorandum

of law dated November 17, 2000, this Court is required to reinstate my amended verified complaint herein.

34. This Court arbitrarily and capriciously refers to a prior federal case to contend that *res judicata* and collateral estoppel apply to the claims in the instant action.

35. Moreover, evidence of the continuing retaliatory conspiracy of defendants, five of whom are attorneys, is shown by the fact that Staff Counsel Bratton (a) who was the attorney representing the Department Disciplinary Committee in the Hearing conduct before Arthur W. Greig, the Hearing Panel Chair, (b) who cross-examined me on December 10, 1997, as a witness who volunteered to testify on behalf of Arthur M. Wisehart, (c) who admitted on the record on December 17, 2000, that he had failed to impeach my prior in-court testimony on July 8, 1991, and that therefore there was no evidence of "theft" of the disputed documents, and (d) who signed the Petition dated August 1, 2000, conspired with their counsel to have my amended verified complaint pending in federal court attached as Exh. F to the Petition for the purpose of using the Appellate Division, First Department, a state court that did not have jurisdiction over me because I am a non-lawyer and a non-party to the disciplinary proceeding against my attorney, to bar my counsel from representing me in order to fully vindicate the violation of my federal rights as alleged in the complaint in violation of 42 U.S.C. § 1988.

36. Further evidence of such conspiracy by Bratton and the other defendants and their attorneys is shown by the statement at ¶¶ 18, 19 of the Petition filed with the Appellate Division which falsely states "Post-Hearing Report Developments")pp. 9, 10):

> ". . . . Attached as Exhibit F is respondent's reaction to receipt of the Hearing Panel Report, namely a 70 page complaint filed in the United States District Court, Southern District of New York, naming Ms. Lipin as plaintiff and the Chair of the Hearing Panel, among oth-

ers, as defendant. *The language contained in respondent's complaint* speaks for itself and contains the type of "bizarre, convoluted allegations" . . . ." similar to his previous submissions described by the Hearing Panel (Panel Report at 8). Given respondent's contained total lack of remorse, his inability to discern his own wrongdoing and his continuing reckless conduct, this Court might well wish to consider imposing a sanction greater than the three (3) month suspension originally recommended by the Panel." (Emphasis added.)

37. That Staff Counsel Bratton participated in the conspiracy with defendant Greig and the other attorneys of the defendants, and the five defendants who themselves are attorneys, to obstruct justice is shown by the injection of my amended verified complaint into the disciplinary proceeding against my attorney that was before the Appellate Division, First Department, a state court which had no jurisdiction over me and which could not legally implicate me in its decision dated March 8, 2001.

38. The Greig affidavit sworn to December 20, 2000, was filed shortly after Staff Counsel Bratton filed an affirmation dated December 5, 2000 in the Appellate Division, First Department, which attached thereto as Exh. A the injunctive motion pleadings dated November 3, 2000 of the undersigned, who is and was a non-party to the disciplinary proceedings against my attorney. (Not. App., 9/28/00, ¶ 5(b), Exhibit T.)

39. That defendants and their attorneys obstructed justice is shown by the opinion and order of the Court dated March 28, 2002, which improperly relies upon the decision of the Appellate Division dated March 8, 2001, as the basis to dismiss my federal action with prejudice and to impose a sanction of $3,000 upon the undersigned, even though I previously had brought to this Court's attention that I am without financial resources. (Not. App., Exhibit T.)

40. The motive and intent of said obstruction of justice to utilize the Appellate Division as a means by which defendants would obtain an improper dismissal of my complaint by interfering with the jurisdiction of this Court to deprive me of my due process right to have my constitutional claims fully and fairly adjudicated in a judicial form, to deprive me of my right to trial by jury as a means of resolving my constitutional claims under § 1983, and to punish me for exercising protective activity, namely, my First Amendment right to petition for redress of grievances and to access the courts in support of my Free Speech and Constitutional rights as shown by the allegations set forth in the amended verified complaint.

41. Said obstruction of justice constitutes a criminal act on the part of defendants, their attorneys, and Staff Counsel Bratton.

42. The conspiratorial act of Bratton to use my complaint as a pretext (a) to request the Appellate Division to enhance the recommended three month suspension of my attorney, (b) to attempt to implicate me, a non-party, in the disciplinary proceeding, (c) to provide a pretext for this Court to deprive me of existing counsel at a critical state in the proceeding, and (d) to provide a pretext for this Court to arbitrarily and capriciously interfere with my federal rights is shown by the opinion and order dated March 28, 2002, and statement that "Challenges to the Panel Report may, and should, be addressed by the Appellate Division. (Op. 13)

43. Such statement (Op. 13) is legally and factually insufficient because as a non-party to the disciplinary proceeding against my attorney I do not have standing to appeal to the Appellate Division.

44. Since I do not have standing or any power to seek "Challenges to the Panel" in the United States Supreme Court because I am a non-party to the disciplinary proceeding, and since this federal action is not the state disciplinary proceed-

ing commenced in secret by unknown adversaries against my attorney, and since this Court's subject matter jurisdiction is not divested by the Rooker-Doctrine, this Court should reinstate the amended verified complaint and permit findings to be made and discovery to proceed as previously requested.

45. The only Hearing Panel member to sign the Hearing Panel Report was defendant Arthur W. Greig, Esq.

46. The Report dated March 14, 2000, falsely states (p.11):

> ". . . Lipin. . . was aware that they [the papers] were privileged, understood the nature of the attorney-client privilege as a paralegal, and was not 'mistaken' in taking them."

47. Directly to the contrary, however, is the only evidence of record before the Hearing Panel is my sworn testimony in court on July 8, 1991 (TR 7/8/91, pp. 30-31:

> "The papers were not in an envelope. They were carelessly left unattended smack in front of me in a pile. . . ."
>
> "Nothing on any of the pieces of paper, including not on the on the first piece, said confidential and/or confidential and privileged." [TR 31]

48. In addition, I testified that I didn't "understand the nature" of Jacoby's question whether I had been given instructions as to the attorney-client privilege and work product. [TR 32]

49. Moreover, I answered, "No," to the question of whether I had discussed the subject of attorney-client privilege with anyone and said that it had never been discussed with me. [TR 34-35]

50. I also testified that I had "not been involved in attorney-privilege work in my responsibilities or tasks" as an employee of Wisehart & Koch. [TR 35-36]

51. Further, I appeared as a voluntary witness on behalf of Mr. Wisehart in the disciplinary proceeding before the Hearing Panel on December 10, 1997, testified (TR 131):

> That Mr. Wisehart told me, shortly after I discovered the disputed documents, that any privilege claim had been waived in his view, based upon a ruling he had received in a federal court previously.
>
> That I was also told by the Mr. Wisehart that the document in that case had been produced and that "whatever confidentiality or privilege that had been attested to that document had been waived because they had produced the document and had been careless." [TR 131]

52. Moreover, Staff Counsel Bratton for the Disciplinary Committee admitted on the record of the proceeding on December 17, 1997 (TR 180), that he had failed to impeach me, and that I was truthful when I testified on December 10, 1997 (TR 173-74) that I had testified in court on July 8, 1991 that I took "temporary" possession of the papers and that I would have returned them immediately if Mark A. Jacoby and/or the defendant-attorneys in this action who had kept me under surveillance at all times asked that they be returned but that no one asked that I do so. (TR 96)

53. In addition, the evidence of the state court record is contrary to the following statement in the Report of the Hearing Panel dated March 14, 2000, at page 7 that:

> ". . . respondent submitted a memorandum of law to Special Referee Birnbaum (Staff Exhibit #7) which made specific reference to the Bender/Fletcher relationship, and Weil Gotschal's [sic] alleged knowledge of that relationship. . . . . [I]t is clear that the specific references to Weil Gotschal's [sic] *knowledge* of the Bender/Fletcher relationship could only have come from the privileged documents . . . ." (Emphasis is the original.)

54. The falsity of the foregoing also is shown by Justice Judith L. Haller's earlier statement following the deposition of Barbara E. Fletcher, who became a fugitive on the eve of her court ordered deposition, taken in San Diego, California on April 15, 1991.

55. Justice Haller of the Superior Court of the State of California made findings clearly showing that the nature of the Bender/Fletcher relationship was in the public domain and well known particularly to Red Cross personnel, and made the following ruling and finding about the nature of the Bender/Fletcher relationship was made available to Justice Moskowitz (Aff. 12/31/01, ¶¶ 53-55):

> "THE COURT: It seems to me in reading portions of the deposition [Fletcher] that from what I have read, *the relevant portions have, in fact, established that there was an intimate relationship between these people [Bender/Fletcher]* without her having to answer that question. It seems incredible that anyone is going to believe that if these two people [Bender/Fletcher] are traveling together to various—this one seminar that they were at in Washington, and *where she [Fletcher] admits that yes, they were together and that, in fact, there were periods of time when they were by themselves and such, it just seems to me, you know, we're all grownups and I think it's very clear there that everybody understand that these folks [Bender/Fletcher] were having an intimate relationship.* And I don't think that I have to order her to answer that question for you to, in fact, establish that, for whatever purposes you are going to use it, whether for bias or whether you are going to use it to try and prove that she [Fletcher] was given preferential treatment in her employment because of her [Fletcher] relationship with him [Bender]." (Emphasis added.)

56. Thus, the Court's statement that "Plaintiff was unambiguously informed by the prior decisions that her claims are barred," is not supported by the record. (Op. p. 23)

57. The Court incorrectly states that "Plaintiff's state court proceedings in *Lipin I* provided her with a full and fair opportunity to be heard. . . ." (Op. p. 15)

58. As shown above this statement is not supported by the record.

59. As stated in my affidavit sworn to October 29, 2001, at paragraphs 39-41:

> "39. Justice (now Judge) Ciparick, who inherited the case after Justice Moskowitz recused herself for bias and prejudice, *denied* defendants' civil and criminal contempt motion (Order dated 12/28/92, Exhibit I annexed hereto).
>
> "40. *Judge Ciparick made the finding that there was no "use" of the documents by either myself or my attorney on the basis of the factual information set forth in my opposition affidavits sworn to November 11 & 23, 1992* and annexed hereto as Exhibit J. See also Exhibit C, p. 3, annexed hereto.) (Emphasis added.)
>
> "41. There are no statements by Judge Ciparick reversing her finding."

60. The opinion and order of the Court imposes sanctions upon me in favor of the defendants who perpetrated the chain of events that they maliciously set in motion on June 28, 1991.

61. The imposition of sanctions constitutes cruel and unusual punishment (a) because I am without financial funds, (b) because I am currently a second year law student who has incurred student loans in excess of $36,000, (c) because defendant American National Red Cross has recently raised almost $1 billion dollars in the wake of the 9/11 attack, which

it has refused to distribute to the victims of the disaster in a timely manner, (d) because the American National Red Cross operates a for-profit health care company with revenues in excess of $1 billion dollars, and (e) because the individual attorneys who are defendants herein are from large law firms including Weil, Gotshal & Manges and Morgan, Lewis & Bockius that have financially benefitted from profits estimated to have exceeded $500,000 for their conspiratorial actions for obstructing justice, unethical practices, and retaliation against me in order to ruin my financial condition and career prospects.

WHEREFORE, it is respectfully submitted that:

1. Enforcement of the judgment of this Court should be stayed to prevent irreparable injury pending the determination of this motion pursuant to Fed.R.Civ.P. 62(b).

2. The opinion, order and judgment of the Court should be vacated.

3. My amended verified complaint should be reinstated.

4. Discovery, findings and a jury trial on disputed issues of fact should be ordered to proceed.

Respectfully submitted,

Joan Carol Lipin
P.O. Box 1257
New York, New York 10028
(212) 722-5894

Plaintiff Pro Se

Sworn to before me this ___ day of April, 2002:

_____

Notary Public

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Filed Mar 29, 2002]

---

00 Civ. 3457 (LTS)

JOAN CAROL LIPIN,

Plaintiff,

-against-

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, *et al.*,

Defendants.

All defendants having moved to dismiss the amended complaint and defendants Baer, parlo and the National red cross having moved for sanctions and injunctive relief, and the matter having come before the Honorable Laura Taylor Swain, United States District Judge, and the Court, on March 28, 2002, having rendered its Opinion (86765) granting defendants' motions to dismiss, dismissing plaintiff's action with prejudice, directing plaintiff and Wisehart to pay each of defendants National Red Cross, Baer and Jacoby $1,000 in respect of the attorneys' fees incurred, and permanently enjoining plaintiff and Wisehart from litigating any further claims as stated in the Court's March 28, 2002 Opinion, it is.

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (86765) dated March 28, 2002, defendants' motions to dismiss are granted with prejudice; plaintiff and Wisehart are directed to pay each of the defendants, National Red Cross, Baer and Jacoby, $1000 in respect of the attorneys' fees incurred; and plaintiff and

Wisehart are permanently enjoined from litigating any further claims as stated in the Court's opinion of March 28, 2002.

Dated: New York, New York
March 29, 2002

JAMES M. PARKISON
Clerk of Court

BY: [Ineligible]
Deputy Clerk

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL and OFFICIAL CAPACITY,

Defendants.

ORDER

For the reasons set forth in the Opinion filed simultaneously herewith, it is hereby ORDERED, that Defendants' motions to dismiss are granted: and it is further ORDERED, that Plaintiff's action is dismissed with prejudice; and it is further ORDERED, that Plaintiff and her former attorney Arthur M. Wisehart ("Wisehart") are found to have violated Rule 11 of the Federal Rules of Civil Procedure, and each is hereby directed to pay each of Defendants National Red Cross. Baer and Jacoby $1,000 in respect of the attorneys' fees incurred by such defendant in defending this action; and it is further ORDERED that Plaintiff and Wisehart are permanently enjoined from litigating further any claims relating to alleged harassment during, or the termination of, Plaintiff's employment with the National Red Cross, as well as any claims concerning any alleged attempts unlawfully to prevent Plaintiff from

litigating such employment-related claims and any claims arising from judicial or disciplinary proceedings relating to Plaintiff's and Wisehart's misappropriation of privileged documents during *Lipin I*, except to seek appellate review of this decision or submit papers responding to applications, if any, by Defendants.

Dated: New York, New York
March 28, 2002

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

00-CIV. 3457 (LTS) (DFE)
Supplemental Affidavit of Joan Carol Lipin

JOAN CAROL LIPIN,

Plaintiff,

-against-

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, in his individual and official capacity,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOAN CAROL LIPIN, being duly sworn, deposes and says:

1. I am the plaintiff in this litigation.

2. This supplemental affidavit is respectfully submitted to bring to the Court's attention new developments that show why the motion dated November 3, 2000, is not "moot," and why the need for discovery, as previously requested, should be granted. Since the filing of my responsive affidavit and Memorandum of Law dated October 29, 2001, to the Orders of this Court dated October 4, 2001, and August 15, 2001, the following developments have occurred:

(a) The Office of the Special Inspector General for Fiduciary Appointments, Office of Internal Affairs, Internal

Audit Unit issued the document entitled "*Fiduciary Appointments in New York A Report to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman*" dated December 3, 2001 (Exhibit A annexed hereto);

(b) A document entitled *Report of the Commission on Fiduciary Appointments December 2001*, which also was made available to the public (Exhibit B annexed hereto);

(c) Public information (i) that Arthur W. Greig, Esq., who is a named defendant in this action in his individual capacity as well as in his official capacity, became the court-appointed counsel in The Matter of Friedman, Index No. 500064/99 on August 4, 2000, in part as demanded by Carol R. de Fritsch, Esq., the Court Evaluator in that case; (ii) that Greig by arrangement became property manager in said case by court order on August 29, 2000; and (iii) that Greig is the court-appointed counsel to the IP.

(d) The cover story entitled *State Bar President Taking Up the Cause Pushes to Make Disciplinary Hearings Public* by Wendy Davis was published in *New York Lawyer*, December 2001 (Exhibit C annexed hereto);

(e) The Food and Drug Administration asked a federal judge to hold the American Red Cross in contempt of court "accusing it of repeated violations of blood safety regulations, including shipping contaminated blood," and "'a cavalier disregard'" for standards of blood quality" (*The New York Times*, 12/14/01, p. A30, Exhibit D annexed hereto);

(f) The news item entitled *Self-Inflicted Wounds How the Red Cross came apart* by Deborah Sontag was published and states that a "longtime Red Crosser who apparently had treated his fief as a personal charity ward," was

indicted on "charges of stealing $1 million in Red Cross funds." (*The New York Times* dated December 23, 2001/Section 8, p. 35, Exhibit E annexed hereto);

(g) The *Judges' Journal, A Quarterly of the Judicial Division*, Fall 2001, Vol. 40, No. 4, American Bar Association, published an article expressing concern about the problem concerning the lack of "Judicial Impartiality Passionate or Comatose." (Exhibit F annexed hereto); and

(H) The news item in The New York Law Journal, dated December 20, 2001, p. 1, entitled "Judges Rebut Claims Made In editorials" which states (Exhibit G annexed hereto):

> "THE STATE's SUPREME COURT judges are taking the offensive in challenging the *Daily News* editorial that charged that nearly half of the 180 Supreme Court justices and surrogates are 'ill-chosen or unfit.'" (Emphasis added.)

I. THE REPORT OF THE SPECIAL INSPECTOR GENERAL

3. Material findings of the Inspector General set below in part, show why the *sub judice* Motion dated November 3, 2000 is not "moot" (Exhibit A annexed hereto, pp. v, vi, 1, 3):

(a) "The investigation further established that many of the recipients of multiple and lucrative appointments in guardianship cases had connections to judges, political parties or court system personnel, raising concerns that they were selected based on factors other than merit." [Emphasis added, p. v.]

* * * * *

(b) "In at least one county, a disproportionate number of the appointments and disproportionate percentage of the

fees went to a group of individuals with connections to the local political party establishment. For example:

* An official of the local political party organization received 46 receivership appointments during a five-year period (about 10% of all the receivership appointments), and about one-third of all receiver fees during that period.

* A law firm, one of whose two members was a high-ranking local political party official, received 34 appointments during the same five-year period." [Emphasis added; p. vi.]

* * * * *

(c) "In general, and contrary to the requirements of the Part 36 rules, receivers, and not judges, appointed their counsel or property manager. Indeed, the general practice across the State was not to apply the fiduciary rules to these 'secondary' appointees." [p. vi.]

* * * * *

(d) Fiduciary appointees are usually private attorneys, but unlike private attorneys who are assigned to represent indigent persons in criminal, family and other proceedings, fiduciaries are not compensated with public funds. Rather, they are usually paid from the assets of the litigants.

"Allegations that judges have selected fiduciaries based on factors other than merit have undermined public confidence in our courts, as have charges that fiduciary appointees have mishandled cases or received excessive fees from their assignments. Criticism of the fiduciary appointment process soared recently with the public disclosure of an extraordinary letter written by two attorneys who has been retained but then dismissed as counsel to a court-appointed received in a Brooklyn

Supreme Court proceeding. The letter laid bare the long-suspected influence that political connections can have on the judiciary appointment process." [Emphasis added; p. 1.]

* * * * *

(e) "Although many have long urged that disciplinary charges against judges and lawyers be made public at an earlier point, as of yet there has been no legislative action in that regard." [p. 3]

4. The bar charts set forth at pages 33 & 34 of the Inspector General's Report on Fiduciary Appointments in New York show the following material and relevant statistical information that supports why this court should permit discovery to proceed:

(a) Guardians:

for New York (i) 40% "Certification of Compliance [were] NOT filed," and (ii) more than 20% "Approval of Compensation [were] NOT filed" [p. 33]; and

(b) Court Evaluators in Receivership Cases: for New York (i) more than 20% "Certification of Compliance [were] NOT filed," and (ii) more than 40% "Certification of Compensation [were] NOT filed."

5. Further, discovery should be permitted to proceed against defendant Greig and all those in privity with him, or acting in concert or participation with him particularly in view of the fact that the Attorney General's office states that it filed papers on behalf of defendant Greig in his official capacity.

6. Since said AG papers are silent with respect to representation of Greig as a named defendant in his individual capacity, we must infer that the Attorney General does not represent defendant Greig is such capacity.

7. Accordingly, in the interest of justice, the undersigned respectfully requests that this Court vacate the prior order staying discovery "pending further order of the Court" dated June 1, 2000, which by the request of the AG's office to stay discovery on behalf of defendant Greig and issue an order permitting discovery to proceed.

II. REPORT OF THE COMMISSION ON FIDUCIARY APPOINTMENTS DECEMBER 2001

8. Certain findings of the Commission's Report which are material and relevant to the importance of discovery concerning the November 3, 2000 motion, are directly relevant to this litigation as set forth below (Exhibit B annexed hereto):

> (a) "Other articles documented the disproportionately large numbers of appointments received by high-level political official." [p. 17.]
>
> * * * * *
>
> (b) ". . . the rules were not applied to secondary appointees such as counsel to the receiver and property managers. . . . . Moreover, these secondary appointees rarely, if ever, complied with the filing requirements, and they did not consider themselves bound by any of the other provisions of Part 36, such as the prohibition against appointment of relatives and the $5,000 rule." [p. 22.]
>
> * * * * *
>
> (c) "The investigation has revealed that a number of judges have given fiduciary appointments to high-level participants in their judicial election campaigns. Appointments were given to campaign managers, coordinators, treasurers and financial committee chairs. Some of the appointments were made within a year or two of the conclusion of the campaign. [Emphasis added; p. 24.]

* * * * *

(d) "A number of appointees who arguable serve in a fiduciary capacity and are paid from the assets of a party or the estate are not now subject to the existing rules." [p. 25.]

* * * * *

(e) "Among the fiduciary appointments in recent years that have generated the greatest criticism have been those received by political party leaders and their law firms (See section III). Party leaders exercise considerable influence over the judicial nomination and selection process. The sheer number of appointments that they and their law firms have received thus raises a troubling perception that political considerations may be influencing the appointments."

(f) "Accordingly, the Commission recommends that State and county political party chairs, and their immediate relatives, be prohibited from receiving fiduciary appointments. . . ." [pp. 28-29.]

9. Further, as shown by the order of the state court in the case Index # 107999/99, Greig is identified as the "court-appointed counsel" to lucrative positions received by him from various judges that he is believed to have participated in selecting as set forth below. (Exhibit H annexed hereto.)

10. To my direct knowledge as Officer of the Lexington Democratic Club, the civil court judge in that case made many failed attempts before she secure the politically manipulated nomination by the New York State Democratic Party through its agents Arthur W. Greig and Denny Farrell.

11. Prior to her eventual nomination, this judge stated to me personally that the reason for her failure to obtain the coveted nomination of "New York State Supreme Court justice" was because "half of the Lexington Democratic Club "supported her and half of the Club did not support her."

12. To my direct knowledge, defendant Greig in his individual capacity and Denny Farrell "worked the deal" with the former president and executive vice president of the Lexington Democratic Club to secured the necessary votes for that individual. Shortly thereafter, Greig became "court-appointed counsel," as a form of "pay-back." (Exhibit H annexed hereto.)

13. The Application of defendant Greig that is filed with the Office of Court Administration states that he is registered as a "Court eval, Guardian." (Exhibit I annexed hereto.)

14. Further, since the "Summary of Statements Filed Pursuant to Judiciary Law, SEC 35-A" do not appear to be either current or complete, defendant Greig should be directed to produce his tax returns for 1991 through 2001. (Exhibit J annexed hereto.)

III. THE MATTER OF FRIEDMAN

15. Andral N. Bratton, Esq., who is an agent of the Departmental Disciplinary Committee ("DDC"), and alleged to be a co-conspirator with the named defendants herein, by virtue of such nexus implicates the DDC as co-conspirators in this action. See *United States v. William DiDomenico*, 78 F. 3d 294, 303, 1996 U.S. App. LEXIS 3736 (7th Cir. 1996) in which Judge Posner states:

> ". . . the principle that allows the admission of defendant conspirator X to be treated as the admission of defendant conspirator Y, usable against Y as the admission of a party provided that the statement is made in furtherance of the conspiracy, disquiets those who believe that the concept of conspiracy gives prosecutors too much power. The rationalization for the principle is that conspirators are each others' agents (and therefore principals), and the principal is bound by the agent's words

and deeds, provided they are within the scope of the agency, so that an admission by one is an admission by all and can be used against all as 'their' admission."

16. These co-conspirators improperly injected my federal litigation into the disciplinary action to cause injury to me by filing the Petition dated August 1, 2000, and other supporting papers in the Appellate Division, First Department.

17. Accordingly, they have injected themselves into this action, and by such acts, the motion dated November 3, 2000, is not "moot."

18. On August 4, 2000, three days after the filing of said Petition, defendant Greig was appointed to the following lucrative court appointments in the Friedman matter.

19. Defendant Greig received said lucrative court appointments in part because Carol de Fritsch, Esq., Court Evaluator, demanded that Greig be appointed counsel. In addition, by arrangement, Greig was appointed property manager, and he is the court-appointed counsel to the IP in the Friedman matter. (Supplemental Order filed March 5, 2001, Exhibit K annexed hereto.)[1]

20. The membership positions of Ms. de Fritsch are materially relevant to why the motion dated November 3, 2000, is not "moot."

21. Ms. de Fritsch represents that she is a member of the Character and Fitness Committee of the Appellate Division, First Department, member of the Committee on the Judiciary

---

[1] Judicial Notice is requested concerning the news item that Justices Richard B Lowe and Karla Moskowitz joined the New York County Commercial Division on or about the end of March 2001, shortly after the Appellate Division issued its decision dated March 8, 2001, of an enhanced two year suspension Arthur M. Wisehart and attempted implication of me, a non-lawyer, private citizen and non-party to that proceeding. (New York Law Journal, October 11, 2001, annexed hereto as Exhibit L.)

of the Association of the Bar of the City of New York, and Chair/Board member of the Committee on the Judiciary of the New York County Lawyers' Association. (Aff. ¶ 4, annexed hereto as Exhibit M.)

22. One of the functions of the Judiciary Committee of the Association of the Bar of the City of New York is to screen judicial candidates and "report" them out.

23. With respect thereto a recent news item states "In a highly unusual move, the Democratic Party has convened a screening panel to recommend three candidates for the couuntywide Civil Court vacancy in Manhattan that will open up in September if Civil Court Judge Barbara Kapnick is nominated, as expected, to the Supreme Court." The article states further that "[a]pplications for the anticipated Civil Court opening . . . may be obtained from Avery Carter at the New York County Democratic Committee Offices 60 East 42nd Street, 18th Floor." (New York Law Journal, June 6, 2001, Exhibit N annexed hereto.)

24. To my direct knowledge, Carter Avery is Denny Farrell's assistant and works with defendant Arthur W. Greig.

1.In the Freeman matter, defendant Greig was appointed by the court to replace the former Guardian attorney who was not a court appointee.

25. It is represented that Greig, at ¶ 15 of his affidavit sworn to November 17, 2000, a copy of which was not available in the file in the Records Room of the New York State Supreme Court as of December 24, 2001, and a copy of which I have not been able to obtain a copy even though I called Mr. Abrams' office and made other calls), Greig "charges [that] 'the former Guardian and his counsel are seeking fees for work relating to a proposed trust which would have placed a court appointed fiduciary in a position as a trustee of Dr. Friedman with the potential for significant trustee fees in a $10 million dollar (or more) estate, . . .'

Greig Aff. ¶ 15." (Shapiro Aff. 11/29/2000, Exhibit O annexed hereto, emphasis added.)

26. Evidence of defendant Greig's lucrative court-appointments and assignments as property manager is relevant to this litigation.

IV. TAKING UP THE CAUSE TO MAKE DISCIPLINARY HEARINGS PUBLIC

27. The statistical findings set forth in said article are material and relevant to the DDC's malicious attack to deprive me of my economic livelihood.

28. The fruit of the poison tree is shown by the Hearing Panel Sanctions Report signed by defendant Greig and dated March 14, 2000, is shown by the fact that disciplinary proceedings are implemented against "the lawyer [who] badly mishandled dealings with the client" (p. 33), and "crooked lawyers" (p. 32). (Exhibit C annexed hereto.)

29. Judicial notice is requested concerning the statistical evidence that last year approximately 13,000 disciplinary complaints against lawyers in New York were filed; 11,400 were dismissed or referred to other agencies; 786 were referred to the court; 264 attorneys faced court hearings last year; and of that group "212 attorneys were disbarred, suspended or publicly censured." (Exhibit C annexed hereto, p. 33.)

30. The article indicates that the complaints were filed by "disgruntled" clients. In addition, the article states that "If the public is in imminent danger, the disciplinary committee can get an immediate suspension," says Mr. Tesser. "That becomes public." (Exhibit C annexed hereto.)

31. Apparently the public was not in "imminent danger" concerning the demonstrably false charges compiled against Mr. Wisehart in the *sua sponte* disciplinary action which was permitted to linger for eight years in an inactive state in the

wings until it became apparent that I was in the process of rehabilitating my professional reputation by embarking upon a second career in the law.

32. The issuance of the decision of the Appellate Division dated March 8, 2001, and the Hearing Panel Sanction Report are circumstantial evidence of fruit of the poison tree.

33. As a point of information, I desire to bring to the Court's attention that recently notification was received that I passed the National Conference of Bar Examiners Multistate Professional Responsibility Examination. (Although my expected date of graduation from New York Law School is 2004, nonetheless I decided to take the examination in November 2001.)

V. THE DEMONSTRABLY FALSE REPORT BY DEFENDANT GREIG

34. The bias of defendant Greig is shown by the fact that the following statements in the Greig Report dated March 14, 2000, are patently false (Exhibit P annexed hereto):

(a) ". . . Ms. Lipin also worked as a paralegal in respondent's law office after March, 1990." [p. 3]

(b) "It was the practice of respondent and Ms. Lipin, his client/employee, for Ms. Lipin to accompany respondent to court proceedings involving her case." [p. 3; emphasis added.]

(c) "The documents included confidential summaries of interviews with various Red Cross officials and other potential witnesses . . . ." [p. 4]

(d) ". . . Lipin. . . was aware that they [the papers] were privileged, understood the nature of the attorney-client privilege as a paralegal, and was not 'mistaken' in taking them." [p. 13]

35. With respect to this statement, the documents were manufactured after I had filed my verified complaint in the state court.

36. Defendant insurance company had a duty to investigate, evaluate and make a decision concerning the allegations set forth in said complaint. See S.D. Warren Company v. Eastern Electric Corporation, 201, 202 F.R.D. 280 (D. ME, July 17, 2001).

37. The sham "interview notes" therefore were not manufactured in anticipation of litigation.

38. Further, the unsworn second interview statements of the Red Cross witnesses occurred after the depositions of said deponents had been taken.

39. Thus the statements of Mary Stanton, Angelo Cinti, Marion Foster are fabricated "smoking gun" evidence that said documents were an improper format manufactured by defendants to attempt to refute my seven (7) days of sworn deposition testimony that occurred over a period of more than one (1) year.

40. Further, the "dangerously crazy" statement allegedly attributed to Mary Stanton that appeared on the first page of the disputed documents is shown to be false by her own sworn deposition testimony of June 6, 1990, in which she (a) identified the Incentive Compensation Plan, (b) testified that she and the undersigned participated in its development, (c) testified that the undersigned played an active part in developing the concept, and (d) commended the undersigned with respect thereto for her conceptual contributions. (TR 6/6/90, pp. 150-51.)

41. Stanton also testified that Red Cross staff members, including the undersigned who was an Officer of the American Red Cross in Greater New York, said in her presence that Bender was having an affair with Fletcher. (TR 6/6/90, pp. 191-94.)

42. Stanton testified (a) that the undersigned said this to her in November/October 1987, (b) that Carol Cohen stated it to her shortly after she began her employment at the Red Cross, (c) that Dorothy Britton, a former Red Cross employee, told Stanton in the summer of 1988 that she believed Bender was having an affair with Fletcher, and (d) that Foster told her she believed Bender was having an affair with Fletcher.

43. Stanton also testified that the undersigned, Cohen, Britton and Foster, all of whom were terminated, told her that they found the Bender/Fletcher affair to be objectionable. (TR 6/6/90, TR. 191-94.)

44. Further, in the Talvy matter Stanton in her sworn deposition testimony on March 20, 1992 stated "No" in response to the following question by Arthur M. Wisehart (TR 3/20/92, p. 69):

> "Q Did Mr. Bender ever say to you in words or substance that Joan Lipin had an unpredictable personality?"
>
> "A No."

45. The statement by defendant Greig that the documents included "confidential summaries of interviews" therefore is false in view of the fact that defendants Jacoby and Baer were representing Bender, the American National Red Cross, and American Red Cross in Greater New York at the time such alleged statements were made but that said defendants waived the privilege and confidentiality when they ceased to represent all three defendants in the state action in May 1990 when Christopher A. Parlo, Esq., of Morgan, Lewis & Bockius entered an appearance for defendant The American National Red Cross. (Sanction Report, p. 4, Exhibit P annexed hereto.)

46. Defendants also engaged in waiver of the documents because they filed pages 1 and 7 as attachments to the letter of defendant Jacoby dated July 15, 1991. (Aff. 10/27/00, Exh. G.)

47. See *Kaminski v. First Union Corp.*, 2001 U.S. Dist. LEXIS 9688, (E.D. Pa. July 10, 2001) which states at LEXIS * 11:

> "The filing of a document with the court, however, creates a presumption of public access to the document. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 782 (3d Cir. 1994). Accordingly, since First Union twice placed the Key Human Resources Issues into the public record by filing it with the Court, it has waived the attorney client privilege as to that document."

48. The Greig Report is riddled with patently false statements.

49. The deceit and fraud maliciously perpetrated upon me by defendant Greig are the statements set forth in the Report at page 7, "respondent submitted a memorandum of law to Special Referee Birnbaum (Staff Exhibit #7) which made specific reference to the Bender/Fletcher relationship, and Weil Gotschal's [sic] alleged knowledge of that relationship. . . . . [I]t is clear that the specific references to Weil Gotschal's [sic] <u>knowledge</u> of the Bender/Fletcher relationship could only have come from the privileged documents . . . ." (Emphasis is the original.)

50. The falsity of this is shown by Justice Judith L. Haller's earlier statement following the deposition of Barbara E. Fletcher taken in San Diego, California on April 15, 1991.[2]

51. Justice Haller of the Superior Court of the State of California made findings clearly showing that the nature of the Bender/Fletcher relationship was in the public domain and well known particularly to Red Cross personnel.

---

[2] Fletcher became a fugitive from a court ordered deposition two days before her court ordered deposition in June 1990, when she got on a plane and left New York State for the State of California, to the direct knowledge of defendants.

52. The following finding of Justice Haller about the intimate nature of the Bender/Fletcher relationship was made available to Justice Moskowitz:

> "THE COURT [Justice Haller]: It seems to me in reading portions of the deposition [Fletcher] that from what I have read, the relevant portions have, in fact, established that there was an intimate relationship between these people [Bender/Fletcher] without her having to answer that question. It seems incredible that anyone is going to believe that if these two people [Bender/Fletcher] are travelling together to various—this one seminar that they were at in Washington, and where she [Fletcher] admits that yes, they were together and that, in fact, there were periods of time when they were by themselves and such, it just seems to me, you know, we're all grownups and I think it's very clear there that everybody understand that these folks [Bender/Fletcher] were having an intimate relationship. And I don't think that I have to order her to answer that question for you to, in fact, establish that, for whatever purposes you are going to use it, whether for bias or whether you are going to use it to try and prove that she [Fletcher] was given preferential treatment in her employment because of her [Fletcher] relationship with him [Bender]." (Emphasis added.)

53. My knowledge of the members of the Disciplinary Committee is such that the mis-spelling of the name of the Weil, Gotshal & Manges law firm as "Gotschal" (Exhibit P annexed hereto), implicates only panel member Arthur W. Greig as the author since clearly such falsity and carelessness would not have been committed by either Bruce A. Green, Esq., a professor at Fordham University School of Law, or Telesforo Del Valle, Jr., Esq., who occupies a high position as a distinguished alumnus at New York Law School, with regard to the name of a law firm that is not only well known,

but is also correctly spelled in the Memorandum to which reference is made at p. 5. (Exhibit Q annexed hereto.)

54. The statement of Greig that my reargument affidavit "summaries Ms. Lipin's *opinions*" concerning my observations of JSC Moskowitz' disoriented behavior (a) when she dismissed by state court action off-the-top of her head on January 9, 1992, (b) when the jurat admitted on the record on July 23, 1992 that she was denying my recusal motion even though she had not "read" the papers but that she would ". . . read them in a minute" (Tr. 6), and stated further ". . . I'm quickly reading the papers." (Tr. 8), and (c) when the state court judge declined to grant defendants' motion for civil and criminal contempt dated July 10, 1992, and instead granted my renewed motion to recuse her for bias and prejudice.

55. The decision in today's New York Law Journal, the State of New York Commission on Judicial Conduct published a decision *In the Matter of the Proceeding Pursuant to Section 44, subdivision 4 of the Judiciary Law in Relation to Louis J. Ohlig, a Judge of the County Court, Suffolk County* (Exhibit R annexed hereto) states:

> "Regardless of the merits of his spouse's claim, respondent should not have injected himself into the dispute. . . . .Respondent's intervention in the matter and his strenuous advocacy on his spouse's behalf created the appearance that he was using the prestige of his judicial status to advance the private interests of another, in violation of the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeal has stated:
>
> ""[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, on or off the bench, must be measured against

> exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be presented. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary." (Emphasis added.)

56. Such Rule is directly applicable to ¶ 115 of my reargument affidavit to the New State Court of Appeals (Greig Report at pages 9-10, Exhibit P annexed hereto). (Aff. 10/29/01, Exh. O.) Chief Judge Kaye subsequently recused herself in the most recent decision of the New York State Court of Appeals dated September 20, 2001, in the proceeding against Arthur M. Wisehart. (Aff. 10/29/01, Exh. X.)

57. As stated in the recent article in the *Judges' Journal, A Quarterly of the Judicial Division*, Fall 2001, Vol. 40, No. 4, American Bar Association, published an article entitled "Judicial Impartiality Passionate or Comatose?" (Exhibit F, p. 15):

> "Judging, after all, is serious business that affects other people's lives."

58. Alexander Hamilton warned in *The Federalist Papers, No. 78*:

> "That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission."

VI. RECENT EVENTS CONCERNING THE RED CROSS

59. The New York Times articles annexed hereto as Exhibit D and E speak for themselves.

60. With respect to the issue of embezzlement (Exhibit E annexed hereto, p. 35), I have direct knowledge that Robert M. Bender, Jr., chief executive officer of the American Red Cross in Greater New York, would demand that the fund raising office bring the "cash" received to the Fifth Floor of 150 Amsterdam Avenue, the physical location of said Executive Unit, to be counted. I was told that the amount of "cash" that went up to the Fifth Floor was not the amount of "cash" that came down.

61. The American National Red Cross Audit Report dated June 10, 1988, state that the New York Red Cross was deficient in several areas under Bender's management:

> "Financial Reporting"
>
> "6. Observation: Although the financial information presented in the Executive Unit's 1987 annual report was derived from the audited financial statements, such information was not reviewed by the external auditor."
>
> "Recommendation: Guidelines for annual reports were issued in a Tills/Boyle American Red Cross memorandum dated October 11, 1984, . . . and require that annual reports be reviewed by the external auditor in order to lend credibility to the presented financial information."
>
> "Fund Campaign"
>
> "7. Observation
>
> "The American Red Cross Handbook (ARC 550), "Code of Procedure," . . . requires prompt remittance of National's share of campaign funds and in no case later than the fifteenth day of the month following receipt."
>
> "The Executive Unit [New York] was late in meeting this requirement for fund campaign monies received in February, March and April 1988."

"Recommendation"

"The Executive Unit must institute procedures to ensure that National's share of campaign funds is consistently remitted on a timely basis in accordance with corporate policy. This is a repeat finding from our 1983 examination." (Bates Stamp No.; L 2572; emphasis added.)

"Cash Receipts"

"Observations: The Executive Unit does not have control procedures in place for dual participation and immediate endorsement of all checks received through the mail. In addition, cash receipts are forwarded to various departments (e.g. Nursing, Bookstore) without establishing daily control totals for such monies. Various departments make transmittals to the Accounting Department without assurance that all checks are ultimately deposited." (Bates Stamp No.; L 2574; emphasis added.)

"Cash Disbursements"

"18. Observation: Indications of the checksigners' review and approval does not appear on documents supporting cash disbursements."

"19. Observation: Blank check stock is not adequately secured in the Accounting Department and is accessible by those other than the check preparer."

"20. Observation: The cashier has exclusive access to the keys and signature plates for one (1) of the checksigning machines, while the secretary for the Accounting Department has exclusive access to the keys for the other checksigning machine."

"Recommendation: No one person should have access to a checksiging machine's keys and signature plates. . . . . This is a repeat finding from our 1983 examination."

"Cash Management"

"21. Observations: Six (6) bank account signatory cards still listed the former controller as an authorized check-signer. At the date of our visit, she had been gone for two (2) months. Another bank account signatory card listed a previous chapter manager, Mr. Thomas Flanagan, as an authorized checksigner, although he died in August 1987."

"Journal Entries/General Ledger"

"22. Observation: The general ledger and journal entries are prepared and posted without review or approval." (Bates Stamp No. L 2575; emphasis added.)

* * * * *

"Administrative and Accounting/Record Retention

"26. Observation: The Executive Unit does not destroy its records in accordance with a Tills/Boyle American Red Cross memorandum dated August 30, 1985, 'Record Retention Guidelines.'" (Bates Stamp No. L 2577; emphasis added.)

WHEREFORE, in the interest of justice, the motion dated November 3, 2000, is not "moot" and discovery should be permitted to proceed.

Respectfully submitted,

Joan Carol Lipin

Sworn to before me this ___ day of December, 2001:

_____

Notary Public

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

- against -

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, AND ARTHUR W. GREIG, in his individual and official capacity,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RESPONSIVE AFFIDAVIT OF JOAN CAROL LIPIN

Oral argument and an evidentiary hearing are requested

JOAN CAROL LIPIN, being duly sworn, deposes and says:

1. I am the plaintiff in this litigation.

2. This affidavit sworn to October 29, 2001, and accompanying Memorandum of Law are filed on such date with permission of the Court, and submitted in response to the Court's Orders dated October 4, 2001, and August 15, 2001, to show why the pending motion dated November 3, 2000, for temporary and preliminary relief, *discovery*, and sanctions against defendant Arthur W. Greig, Esq., and his

attorney Carolyn Cairns Olson, Esq., is *not* moot. (Endorsed Memo; Orders, respectively; Exhibit A annexed hereto.)

I. THE MOTION IS NOT MOOT IN VIEW OF CONTINUING RETALIATION AND SPOLIATION AND EXCLUSION OF EVIDENCE

3. The malicious motive underlying the continuing course of retaliatory conduct by defendants to silence me came as a matter of public attention in the major story regarding the surprise ouster of Dr. Bernadine Healy, President of the American Red Cross, appearing on October 27, 2001, in the *New York Times* (p. B9) (copy annexed hereto as Exhibit B).

4. According to the news item by reporters Katharine Q. Seelye and Diana B. Henriques, the ouster of Dr. Healy occurred in the midst of the terrorism crisis and involved two major issues that also were involved in my own ouster in 1988 when I rejected the sexual harassment by the Chief Executive Officer of the New York Red Cross, Robert M. Bender, Jr.

5. The issues that had lead to "severe criticism of Dr. Healy," as she walked away "weeping" from reporters, after telling them that "I had no choice but to resign," in the "huge marble hall" of the Red Cross building in Washington, according to the story in the *Times*, involved "her actions after the Sept. 11 terror attacks." (Exhibit B annexed hereto.)

6. The issues included the handling of blood donations to the Red Cross and the handling of nearly $500,000,000 ($500 million) in contributions resulting from the terrorist tragedy, with regard to which it was claimed that rather than being used strictly to provide relief for the WTC victims, for which the funds had been solicited and collected, they were being dissipated by being spent on other Red Cross programs, and Dr. Healy had "flip-flopped" on whether the Red Cross would provide a database on how much had actually been paid to the

families of victims by the Red Cross as repeatedly requested by Eliot Spitzer, the New York Attorney General.

7. The ouster of Dr. Healy occurred just shortly after she had agreed to provide the information for the database as requested by Mr. Spitzer.

8. Also significant is the action of Dr. Healy, who is believed to be the first fully accredited physician to head the Red Cross, in firing two of its senior disaster relief officials shortly after September 11, a dismissal referred to as "traumatic" by an unnamed senior disaster relief official who is quoted in the story in the *Times*.

A. *Admitted Spoliation and Exclusion of Evidence*

9. Defendant Greig's unseemly desire to protect defendant Jacoby is confirmed (a) by his refusal to hear any testimony from me on December 10, 1997, involving the involvement of Barbara E. Fletcher, Bender's admitted plaything, as confirmed in the Report dated March 14, 2000, after the departure of her predecessor, Nan B. Clingman (p. 5), in the admitted destruction of property in the form of the records, programs, contributions, and developments that I contributed to the Red Cross, within a week after my termination. Such destroyed documents were physically contained in the locked file cabinet physically located in my Red Cross office.

10. Contrary to the silence of the Greig Report, Fletcher admitted under oath and in response to the direct examination of my attorney that she had destroyed those documents. Fletcher's deposition was taken in California on April 15, 1991, *ten (10) weeks prior to the sudden appearance of the disputed documents, which were xerox copies, that were placed in "that precise location and not otherwise safeguarded"* on June 28, 1991. (*Lipin v. Bender*, 193 A.D.2d 424 (1st Dep't 1993.).

11. The destroyed documents confirmed evidence that I was an Officer of the American Red Cross in Greater New York and Health Services Executive who was privy to the fact that the American National Red Cross knew that it had been acting as a distributor of tainted blood products by collecting HIV infected blood which it sold to health care facilities at an immense profit.

12. Such documents also confirmed Bender's admission in my presence at an Executive Management Meeting that "someone had inverted the P.O. Lock Box number for disaster relief funds and $1 million dollars was missing," and confirmed evidence of the probability of continuing embezzlement of disaster relief funds by top Red Cross officials.

13. In addition, the destroyed documents confirmed evidence that the Red Cross funnels restricted disaster relief receivables into a general disaster relief fund account and that such restricted monies are used for general purposes in violation of generally accepted accounting principles.[1]

14. In early 1986, I had developed, at Bender's request, the first cost accounting budgeting process for the New York Red Cross as well as a program budget procedure. The procedures were approved and adopted by the Board of Trustees.

---

[1] The nature of the destroyed documents also confirmed evidence of the recognized anti-semitic profile of the Red Cross concerning the pretextual requisite that if the Morgan David Israeli Red Cross desired to become a member of the International Red Cross it would have to adopt the insignia of the Red Crescent Society (Middle East) Red Cross.

My parents are refuges from Germany. I vehemently opposed such anti-semitic tactics by the Red Cross and was retaliated against by Bender for exercising my First Amendment free speech rights

That the Red Cross is recognized to be a racist organization was also confirmed by the destroyed documents, a pattern or practice which I was known to vehemently oppose.

15. The Board of Trustees of the New York Red Cross mandated implementation of the cost accounting system that I had designed. Bender sabotaged the cost accounting system shortly after its implementation, however, and the financial and accounting functions at the Red Cross was seriously compromised.

16. The effect of Bender's acts caused the degradation and collapse of the accounting function of the New York Red Cross.

17. The destroyed documents also confirmed evidence that Bender violated those generally accepted cost accounting procedures and that substantial sums of Red Cross money were lost, "missing" or misappropriated.

18. Shortly before my termination at the Red Cross, Bender publicly stated while conducting a senior management meeting that he wanted the chief fiscal officer, Joseph Costanzo, to set up and keep two sets of accounting books.

19. I orally objected to such unlawful accounting practices at said meeting.

20. To conceal his own complicity in this collapse of the accounting and budgeting process, Bender destroyed the documents I previously prepared relating to the proper performance of the cost accounting function and system.

21. That Staff Counsel aided and abetted defendant Greig in suppressing evidence concerning defendants' unlawful acts to conceal and destroy evidence of the waste or injury to the property of the New York Red Cross and the spoliation of documents relating to the performance of the accounting function that had been mandated by the Board of Trustees is established by the silence of the Report.

22. That defendant Greig also excluded evidence concerning the admitted spoliation and obstruction of justice by Bender's sabotaging and irreversibly injuring the budgeting and accounting programs that the Board of Trustees of the New York Red Cross had mandated.

23. Moreover, Staff Counsel Bratton aided and abetted defendant Greig by suppressing culpable evidence that Bender and defendant Jacoby conspired (a) to terminate me in retaliation for exercising my First Amendment free speech rights and objections to sexual harassment, (b) to destroy the records relating to the malfeasance and misfeasance of Bender, and those in privity, and (c) to block any investigation or remedial action by the Trustees of the New York Red Cross regarding the unlawful misconduct of Bender.

24. To my direct knowledge, Jesse D. Wolff, Esq., former Red Cross Trustee, in-house counsel of the New York Red Cross, and supervising partner of defendant Jacoby, violated his fiduciary duties as a Trustee of the Red Cross because he failed and refused to take any action to remedy the adverse consequences of the Bender/Fletcher relationship upon the administration of the Red Cross, and to prevent the spreading waste to programs, properties, costs and expenses, and missions of the Red Cross resulting therefrom.

25. Defendants' massive destruction and shredding of material evidence favorable to me is established by the suppression of such exculpatory evidence in the Greig Report. Also suppressed is exculpatory evidence that defendant Jacoby is a co-conspirator with respect to such destruction of documents which is confirmed by the disputed documents. See letter of Martin C. Seham, Esq., to Andral N. Bratton, Esq., dated December 4, 1998, annexed hereto as Exhibit C. See also the Verified Responses of the Red Cross defendants dated March 7, 1990 (Wisehart Aff. 7/8/91, Exhibit D annexed hereto) that state:

> "(m)—(n) Following plaintiff's [termination], documents and files contained in plaintiff's office were disposed of as follows:
>
> "*Approximately one half of the documents and files were discarded.* The remaining documents and files

were integrated and commingled with ARCGNY's then newly created centralized management system. As a result, ARCGNY cannot identify which of its files were maintained by plaintiff while employed by ARCGNY." (Emphasis added)

26. The Greig Report also suppresses Fletcher's following admissions under oath that in her capacity as a Red Cross employee and the assistant to Robert M. Bender, Jr., and at the time of the Bender/Fletcher open and notorious relationship that (TR 4/15/91, pp. 122; 123):

"A. *"I destroyed many pieces of paper that were in Joan Lipin's office post her termination of employment at the American Red Cross in Greater New York.*

"Q. Did that occur right after [Joan Lipin's] termination or shortly thereafter."

"A. It occurred shortly thereafter.

"Q. Did you do this on your own responsibility or were you requested to do it?

"A. *I was requested by Robert Bender to get Joan Lipin . . . .*"

* * * * *

"Q. And what did you do with the files that were discarded?

"A. Some were *shredded*; some were simply thrown away." (Emphasis added.)

27. The issue of missing funds was before Special Referee Birnbaum on June 28, 1991, for the purpose of obtaining certain rulings on the objections and directions not to answer by the defendants' attorneys at the examination of the Red Cross witness, Carl Desch, Treasurer of the New York Red Cross on June 17, 1991, which was *eleven (11) days before the sudden appearance of the disputed documents that were*

placed in "that precise location and not otherwise safeguarded" on June 28, 1991.

28. The matters before Special Referee Birnbaum on the morning of June 28, 1991 were subject to rulings. The Special Referee granted my request and directed defendants' attorneys (a) to produce Bender's expense reports, (b) to proceed with the continuation of the Desch deposition be continued, and (c) not interfere with the examination of Desch concerning the issue of frequent and exorbitant salary increases given by defendant Bender to his co-conspirator Fletcher (Desch Tr. 6/17/91, Exhibit L, pp. 91-93).

29. The Special Referee reserved on the following examination issue raised in the Desch deposition (Tr 6/17/91, p. 41):

> "Q. How did it come to the attention of the board of trustees that there were six hundred thousand dollars in missing funds?"

30. Fletcher also made the following sworn admissions at her deposition that Red Cross money was missing (TR pp. 295-298):

> "Q. Where it says, 'Transplantation is missing—$1,077,000 in income is therefore missing,' is that something you wrote in?"
>
> "A. Yes."
>
> "Q. Does that refer to some mistake that was made by Mr. Costanzo or somebody in his group?"
>
> "A. Well, it certainly says that something was missing, so if that's a mistake, then yes."
>
> "Q. Well, *what was the reason for the fact that over a million dollars in income was missing*?"
>
> A. Sir, I don't know the circumstances surrounding." (Emphasis added.)

31. In addition, Fletcher admitted that in her own handwriting she wrote "Transplantation is missing—$1,077,000 in income is therefore missing," and "Transplantation is missing—$1,032,000 is therefore missing." (TR 4/15/91, Exhibit 26, L 9712 & 9713.)

32. Judicial notice is requested concerning the fact that (a) the Special Referee directed discovery to proceed, (b) directed the continuation of the Bender deposition for a date to be scheduled in early July 1991, and (c) directed the filing of a memorandum by the parties on the issue of privacy on the basis of his ruling that Bender must assert any claim of right of privacy himself; that counsel could not do it. (Exhibit C, p. 6, Exh. U; TR 6/14/91, pp. 352-366.)

33. The aforementioned discovery did not proceed, however, because the disputed documents, that were not relevant to the proceedings before the Special Referee or the continuation of the Barnett Deutch deposition, made their sudden appearance on June 28, 1991, *six (6) weeks after Justice Karla Moskowitz instructed defendants' counsel on May 13, 1991, to settle the case or it would be sent to trial.*

B. *Exclusion Of Exculpatory Evidence—The Law Of The Case Is That There Is No Finding Of "Use" Of The Documents*

34. Staff Counsel Bratton aided and abetted defendant Greig in the willful suppression of exculpatory evidence favorable to me.

35. Defendants served a Notice of Entry of the Order of dismissal of Justice Moskowitz on January 9, 1992, that contains the language:

> "Clerk directed to enter judgment dismissing complaint as to all defendants pursuant to this Order."

36. While my appeal to said dismissal order was pending, and in an attempt to avoid answering the then pending

amended verified complaint in *Joan Carol Lipin v. American National Red Cross, American Red Cross in Greater New York, Robert M. Bender, Jr., Mary Stanton, Mark A. Jacoby, Lawrence J. Baer, and Jesse D. Wolff*, 92 Civ. 4455 (LBS), that had been filed in good faith and pursuant to New York Civil Practice Law and Rules 205(a), defendants obtained an order from Justice Moskowitz to show cause for civil and criminal July 10, 1992. Defendants also sought to obtain a ruling that the dismissal order was "intended" to be on a "with prejudice basis."

37. To the direct knowledge of the defendants herein, said order to show cause was filed in bad faith.

38. Defendant Greig suppressed the decision of Justice (now Judge) Ciparick dated December 28, 1992, who inherited the case after Justice Moskowitz granted my recusal motion on August 6, 1992. See the following affidavits annexed hereto, respectively as Exhibits E to H, respectively, and sworn to July 21, 1992 (Exhibit E); July 22, 1992 (Exhibit F); July 29, 1992 (Exhibit G); and August 4, 1992 (Exhibit H).

39. Justice (now Judge) Ciparick, who inherited the case after Justice Moskowitz recused herself for bias and prejudice, *denied* defendants' civil and criminal contempt motion (Order dated 12/28/92, Exhibit I annexed hereto).

40. Judge Ciparick made the finding that there was no "use" of the documents by either myself or my attorney on the basis of the factual information set forth in my opposition affidavits sworn to November 11 & 23, 1992 and annexed hereto as Exhibit J. See also Exhibit C, p. 3, annexed hereto.)

41. There are no statements by Judge Ciparick reversing her finding.

42. That Bratton aided and abetted defendant Greig is established by the following portions of the transcript of the Hearing, in which the request was made for the production of

the disputed documents. (Tr 12/10/97, and pages 11 through 47 of the Transcript dated November 12, 1997.)

43. In addition the Report itself demonstrates that it was a product of and affected by ex parte communications on the part of defendant Greig and those in privity.

44. Further, the information in the documents was not from prospective witnesses but from Bender himself as established by the Greig Report which states, on the basis of ex parte communications and receipt of the disputed documents, that:

> "The documents also contained evidence of alleged prior romantic involvement between defendant Bender and two former employees of defendant Red Cross. . . ." [p. 4]
>
> * * * * *
>
> "The documents also recited details to defendant Bender's *romantic involvement with one [Barbara] Fletcher and one [Nan] Clingman*, who were present and/or former female employees of defendant Red Cross, thereby supporting certain elements of Lipin's sexual harassment claim." [p. 5]

45. Since Bender was telling in-house counsel, the law firm of Weil, Gotshal & Manges, for his employer the details concerning his relationships with other female employees, that in itself would be evidence that the privilege had been waived by Bender as a result of making such admissions to his employer.

46. That this at a minimum would raise issues requiring examination of the documents and the circumstances on the disputed fact issue in detail is indicated.

47. In the interest of justice, the request for discovery should be granted so that findings could be made on these crucial issues.

48. The information in "the documents" from the Greig Report about Bender's so called "romantic involvement" with both Fletcher and Clingman necessarily was derived from ex parte communications.

49. Such information certainly was not a part of the record of the proceeding before Greig.

50. To my certain and definite knowledge such information was definitely contained in the disputed documents but I am enjoined from even referring to them.

51. The predicate of the statement from the Greig Report quoted above regarding Fletcher and Clingman could be found only in those disputed documents and/or in discussions with persons familiar with the documents such as Weil, Gotshal & Manges and/or Morgan, Lewis & Bockius.

52. Discovery is requested concerning who prepared that portion of the Report since it is absolutely clear that the person preparing the Report had to have had access to ex parte communications, including the documents themselves.

53. From the standpoint of the constitutional dimensions of the issue, as confirmed by the Greig Report, the dismissal of my claim for sexual harassment had nothing whatsoever to do with the merits, and as a result, not only was I subjected to a "tragedy of epic proportions" but also I lost a very valuable claim.

54. Moreover, the foregoing statement in the Greig Report itself demonstrates the utter incredibility of the statement by Justice Moskowitz who said, after supposedly examining the documents, and just moments before dismissing my state action that (Tr 1/9/92, p. 8):

> "Whatever was in these papers, and I asked to look at the papers because I felt that that was something I should do. I don't even see anything in these papers in relation to this lawsuit." (Emphasis added.)

55. In view of the above, and in the interest of justice, since there is probable evidence that ex parte communications occurred, I respectfully request that discovery and/or an investigation be permitted to proceed on the basis that the taint of the Greig Report confirms evidence of retaliation against me for exercising my First Amendment free speech rights.

56. See paragraph 95 of the amended verified complaint that states:

> "95. On information and belief defendant Greig and the staff of the Disciplinary Committee have engaged in ex parte communications on a continuing basis with the defendants who are attorneys since it is apparent from the contents of the Report dated March 14, 2000, that they had access to portions of the disputed documents that were not available to the plaintiff's attorney for the purpose of demonstrating that their contents were neither privileged nor confidential, and further that any such claim has been waived." (Emphasis added.)

57. Also of significance is the reference to the "romantic involvement" information regarding Bender set forth in paragraph 65 of the complaint that states:

> "65. The malicious motivation of defendant Greig toward plaintiff Lipin is shown by his mischaracterization of Bender's unlawful treatment of other female employees as being merely a "romantic involvement" rather than by accurately describing its true nature as an unlawfully hostile work environment for female employees that had been instigated by the Chief Executive Officer of the New York Red Cross to humiliate and entrap female Red Cross employees, including plaintiff, into a form of sexual slavery."

58. That Staff Counsel Bratton aided and abetted defendant Greig is established by Greig's suppression of the following

factual information set forth in the letter of Patrick Wall, Esq., to Andral N. Bratton dated June 28, 1996 quoted in relevant part below (Exhibit K annexed hereto):

> "Although the fact that Bender was having an affair with Fletcher was apparently mentioned in the documents, the directive by Justice Moskowitz that Respondent make no 'use' of the documents did not preclude him from using the fact that such an affair existed if he had reason to believe it from a source other than the documents. He had numerous such sources. For example:
>
> "1. On February 12, 1990, Respondent took notes (see Exhibit A) of a conversation with one Carol Cohen in which she said that it was 'common knowledge' [that] Bender and Fletcher had [a] relationship;
>
> "2. On April 19, 1990, during a deposition one Angelo Cinti, the [Red Cross] witness was asked whether Bender and Fletcher were engaged in a sexual affair and was directed by counsel from Weil Gotchal [sic] & Manges (WGM) not to answer (see Exhibit B);
>
> "3. On June 6, 1990, during a deposition of one Mary Stanton, at pages 193-94 (see Exhibit C), the witness stated that a number of Red Cross employees had told her that they believed Bender and Fletcher were having an affair;
>
> "4. On September 29, 1990, Respondent took notes (see Exhibit D) of a conversation with one Joanne Jamann in which she said that she 'knew about Fletcher and Bender;"
>
> "5. On October 12, 1990, one Bridgit Acosta gave Respondent a statement in which, at page 7-8 (see Exhibit E) she said that she knew that there was 'something going on' between Bender and Fletcher;

"6. On April 15, 1991, during a deposition of Barbara Fletcher herself, at page 172 (see Exhibit F), the witness, through counsel from WGM and her own counsel, made a claim of privacy when refusing to answer whether she had had 'intimate relations' with Bender;[2]

"7. On June 14, 1991, during a deposition of Robert M. Bender, Jr., himself, at pages 353-54 (see Exhibit E), the witness, through his counsel from WGM, asserted a claim of privacy when refusing to answer whether he and Fletcher had 'stayed together' overnight on a particular occasion;

"8. On June 16, 1991, Respondent took notes (see Exhibit I) of a conversation with one Carl Desch, in which he said that he 'knows about Bender/Fletcher;"

"9. On June 20, 1991, Respondent took notes (see Exhibit J) of a conversation with one Edward B. Talvy in which he said that 'everyone knew about Bender and Fletcher; '[it was] an open affair."

"10. On June 28, 1991, during a deposition of one Barnet Deutch, at pages 162-63 (see Exhibit 0), the witness stated that he had heard from a number of Red

---

[2]"fn1. So obvious was the inference to be drawn from this single claim of privacy by Fletcher when taken in connection with the rest of her deposition testimony [taken on April 15, 1991], that the California judge who denied Respondent's motion to compel Fletcher to answer the question stated in her ruling (see Exhibit G) that:

> "[F]rom what I have read, the relevant portions [of Fletcher's testimony] have, in fact, established that there was an intimate relationship between these people [i.e., Fletcher and Bender] without her have to answer that question. . . . We're all grown-ups and I think it's very clear here that everybody understands that these folks were having an intimate relationship. And I don't think that I have to order her to answer that question for you [plaintiff's California counsel] to, in fact, establish that. . . ."

Cross employee that bender and Fletcher were believed to be having an affair.

"It is clear, therefore, that [my attorney] had numerous sources of information other than the documents upon which to rely in making the assertion that Bender and Fletcher were engaged in an affair.

"To the extent that the gravamen of the charge is that [my attorney] argued to Special Referee Birnbaum that WGM [Morgan, Lewis & Bockius] knew of the affair, some of the same sources of information listed above also provided [my attorney] with that knowledge as well. In each of the depositions mentioned in Items 2, 6 and 7 counsel from WGM [and MLB] asserted a privacy privilege in directing the witness being deposed not to answer a question calling for a disclosure that the affair existed. Assuming, as we must, that the claim was made by WGM [and MLB] in good faith, its assertion demonstrates the existence of the [Bender/Fletcher relationship]."

C. Exclusion Of Exculpatory Evidence -- The Law Of The Case Is That There Is No Finding Of "Theft" Of The Documents

59. That defendant Greig suppressed, concealed and fabricated evidence concerning the law of the case that there was no "theft" of documents and that on the basis of that finding the personal knowledge affidavits of defendants Baer and Jacoby sworn to July 3, 1991 that were established to be false (Exhibits L and M annexed hereto, respectively).

60. Moreover, that Staff Counsel Bratton aided and abetted defendant Greig in suppressing, concealing and fabricating evidence concerning the sworn record including affidavits, oral testimony to the courts, admissions and uncontradicted statements supports the issuance of a preliminary injunction

and sworn depositions pursuant to Federal Rules of discovery.

61. Confirmed evidence that the law of the case in Lipin v. Bender that no "theft" of documents is established by the findings of Justice Moskowitz on July 8, 1991, July 11, 1991, and on the finding of the Appellate Division Decision dated May 11, 1993 on the basis of my credibility and the veracity of my in-court testimony on July 8, 1991:

July 8, 1991 (TR 91):

"Q. Do you know where Mr. Baer's briefcase was?

"A. No, I don't, Mr. Jacoby.

"Q. Do you know where Mr. Baer's papers were?

"A. No, I don't Mr. Jacoby.

"THE COURT: That is the answer."
(Emphasis added);

July 11, 1991 (TR 146-147):

"THE COURT: Counselor, if I were the plaintiff—her testimony isn't that she stole papers, but that she sat down and the papers were in front of her, right?

"Mr. Jacoby: Your Honor, these were papers on a counsel [conference] table. She didn't put them there. Not her lawyer. The lawyer on the other side.

"Now, I don't believe for one minute that this pile of papers was sitting directly in front of her in a neat pile facing her four inches off the table.

"THE COURT: That is the testimony.
"Mr. Jacoby: I understand that.

"THE COURT: You didn't bring anybody in to say that the papers were scattered, or the papers were on the other side of the table, or the papers were at the foot of

the table, or the papers were in any other location. If I choose to believe the plaintiff then her testimony, and I was just looking for it, is that she sat down before argument started and when she sat down, right in front of her, four inches from the edge of the table, was a neat stack of papers." (Emphasis added); and

62. There are no statements by Justice Moskowitz nullifying the foregoing findings by her. In addition in its Decision and Order in Lipin v. Bender, 193 A.D.2d 424 (1st Dep't 1993), the Appellate Division said:

> ". . . plaintiff . . . found immediately in front of her at her 'customary' location at the [conference] table, a stack of documents of some 200 pages. It is unclear why and by whom the documents were placed in that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 by 6 foot [conference] table." (Emphasis added.)

63. Moreover, Justice Moskowitz denied defendants' Order to Show Cause request that discovery be stayed (OTSC 7/3/91).

64. That defendants refused to proceed with discovery by rejecting the Orders issued by Justice Moskowitz on July 3, 1991, July 9, 1991, and July 11, 1991 is a matter of record.

65. It is also a matter of record that the New York State Court of Appeals denied defendants' motion to substitute the subsequent dismissal order of Justice Martin Schoenfeld, JSC, entered August 31, 1994, as the appealable dismissal order which states (Lipin v. Bender, Jr., et al., 84 N.Y.2d 858; 642 N.E.2d 320 (1994)):

> "Motion to substitute the judgment of Supreme Court entered August 31, 1994 as the appealable paper herein denied."

66. That the subsequent dismissal order entered August 31, 1994, is not yet "final" is established by the injunction issued therein, and by the decision of the New York Court of Appeals dated May 6, 1996, that states:

> ". . . the order does not finally determine the action within the meaning of the Constitution. . . ."

D. Staff Counsel Bratton Admits He Couldn't Impeach

67. Staff Counsel Bratton admitted that he couldn't impeach me as a credible witness, who voluntarily testified on behalf of my counsel in the proceeding on December 10, 1997 (TR 12/17/97, pp. 179-180) on the basis of my prior in-court testimony on July 8, 1991 that documents were temporarily possessed, voluntarily returned to defendants' counsel, and not "stolen." (TR 12/10/97, pp. 145-148).

68. That Staff Counsel Bratton aided and abetted defendant Greig in the suppression of such exculpatory evidence is established by Greig's threat during an off-the-record telephonic conference call on November 4, 1998, that he was under strict orders from the Chief Counsel to "close the case down," and his denial of my attorney's request to present evidence as to how the disputed documents became available, including an on-site inspection of the premises. That I was present during the telephonic conference call is known to defendant Greig.

69. Defendant Greig also has knowledge that the personal knowledge affidavit of Jacoby sworn to July 3, 1991, is false on the basis that Jacoby was not present in the New York State Supreme Courthouse in Lipin v. Bender on June 28, 1991, as the undisputed Diagram of the physical location of the disputed documents placed in "that precise location and not otherwise safeguarded but counsel for defendants were sitting directly across the 12 by 6 foot [conference] table" on June 28, 1991. (Exhibit N annexed hereto.)

70. Suppression of material evidence by the prosecution violates Due Process.

71. Further, whether the suppressed evidence was material depends upon whether there is a reasonable probability of a different result had it not been suppressed.

72. The prosecution has a special role responsibility in criminal trials.

73. The elements of a Brady violation are satisfied herein and are set forth below:

(a) the evidence must be favorable to the accused, either because it is exculpatory, or because it is impeaching;

(b) the evidence must have been suppressed, either wilfully or inadvertently; and

(c) prejudice must have occurred.

74. The fact that there was a suppression order in force concerning the disputed documents during the proceeding does not excuse the rulings of defendant Greig that those documents could not be produced as evidence and that defendant Baer could not be subpoenaed as witness.

75. Thus the evidence indicating that the Hearing Panel had the documents is exculpatory evidence itself that such evidence was suppressed.

76. Accordingly, I am asserting a New York Judiciary Law Section 487 claim against defendant Greig and his attorney, Carolyn Cairns Olson, Esq., as well as the remedy of sanctions.

E. Strength Of My Equal Protection Claim

77. That the Greig Report corroborates the strength of my equal protection claim is shown by my continuing effort to develop a new career over a period of eleven years and confronted with a horrendous stigma, and an extremely marginal financial condition.

78. The Hearing Panel specifically found based upon the dismissal of my case for sexual harassment against a high-level Red Cross official, a "tragedy of epic proportions had occurred."

79. In view of the foregoing events, one is forced to ask how many tragedies of epic proportion have to occur before the courts and responsible officials will pay attention?

II. GREIG'S THREAT AND CONTINUING RETALIATION

80. That I am, and continue to be, the real target of the proceeding instigated in secret against my attorney also is shown below.

81. In the presence of others during the off-the-record telephonic conference call on November 4, 1998 discussed above, Greig maliciously threaten me when he said:

"*you will have to face up to what you did sooner or later.*"

82. Greig's threat to me was made in retaliation in part (a) because Staff Counsel Bratton failed to impeach my testimony; (b) because I exercised my free speech First Amendment rights relating to matters of great public concern. See affidavits annexed hereto respectively, and sworn to 11/30/94 (Exhibit O); 7/21/92, pp. 20-31 (Exhibit E); 7/22/92 (Exhibit F); 7/29/92, pp. 3-4 (Exhibit G); 8/4/92 (Exhibit H); and (c) because I requested that Staff Counsel Bratton withdraw the false and defamatory statements about me that are set forth the Post-Hearing Memorandum dated September 3, 1998. (Letters dated October 21 & 30, 1998, annexed hereto as Exhibit P annexed hereto.)

83. Defendant Greig made his threat to me in his official capacity as Hearing Panel Chair for the departmental disciplinary committee, of the New York State Supreme Court, the First Judicial Department, and in his individual capacity (a) as member of the Judiciary Committee of The

Democratic Party Of The County Of New York, (b) as Co-Chair of the Democratic County Committee Law Committee under the Judiciary Committee which is headed by Herman D. Farrell, Jr., County Leader, and (c) in his functional capacity as Convenor of the Democratic Judicial Convention for the 1st Judicial District that had been held on September 24, 1998.

84. When Greig threatened me he had direct knowledge that I had attended said Convention as an elected Alternate Delegate to Judicial Convention who was certified by the Board of Elections in the City of New York.

85. Greig also had direct knowledge that as a witness for my attorney in the proceeding I testified on December 10, 1997 that (Not. App. 9/28/01, incorporated by reference, TR 156):

> "I am . . . a judicial delegate. I am an elected judicial delegate, alternate. And the function of that position is to . . . determine [and], evaluate [the] qualifications of judges." (Emphasis added.)

86. That the Report is tainted is established by Greig's conflict of interest concerning his participation in the improper influence of political factors in connection with the dismissal decision of Justice Moskowitz on January 9, 1992.

87. That the political influence on the selection of state court and civil court judges is a matter of great public concern and of concern to the American Bar Association is established by the recent news item in the New York Law Journal, p. 1, 10/16/01, which states (Exhibit Q annexed hereto):

> "'Judges are supposed to be impartial and not take any positions prior to ruling on a particular case,' said Virginia Sloan, executive director of the Constitution Project, ... 'What we have seen in the part several

> years is [state court] judges who attack one another, attack their opponents, talk about how they would rule before they are even on the bench and other troubling things that really diminish people's confidence in the independence and impartiality of the judiciary.'"
>
> * * * * *
>
> "'Right now, in a lot of states where we have elections we have a real problem with the perception of impropriety when [state court] judges take a large amount of campaign contributions in order to run their races."

88. In his public capacity as Convenor for the Democratic Judicial Convention for the 1st Judicial Department that was held on October 4, 2001, defendant Greig has direct knowledge that I was present as a Judicial Delegate Alternate and that I am a witness to his political manipulation of the nomination of state court judicial candidates.

89. Material evidence of such political manipulation by Greig is established by the statements of the eight (8) judicial candidates at that Judicial Convention who were reported out by the Screening Committee but who were compelled and/or coerced by Greig to withdraw their names that evening.

90. Exculpatory evidence also is confirmed by statements of some of the same eight (8) judicial candidates who were compelled and/or coerced to withdraw their candidacy at the Judicial Convention that was held last year on September 21, 2000, and excerpts from the acceptance speech of one of those judicial candidates who finally was nominated for Supreme Court Justice. Said individual said:

> "I'm now going to read a very short listing of people who have fancy jobs . . . they are very dear in my heart - Arthur Greig."

91. Greig's threat "*you will have to face up to what you did sooner or later*" also was made in retaliation for the letters I sent to Bratton dated October 21 & 30, 1998, as stated above.

92. That Staff Counsel Bratton aided and abetted defendant Greig is established by the following request to Bratton (Letter dated October 21, 1998, Exhibit P annexed hereto):

> "I personally request that you withdraw Staff Counsel's Post-Hearing Memorandum dated September 3, 1998, in light of the false and defamatory statement at page 11, namely, "Lipin's theft of his adversary's papers," and the related false statements and misrepresentations therein. [Emphasis added.]
>
> "Contrary to the foregoing, my undisputed sworn testimony before then Acting New York State Supreme Justice Karla Moskowitz on July 8, 1991, demonstrates the falsity of the false and defamatory statement."
>
> * * * * *
>
> "The significance with respect to such finding by Justice Moskowitz is that the "personal knowledge" affidavit of Weil Gotshal & Manges attorney Lawrence J. Baer, sworn to July 3, 1991, which triggered the dismissal proceedings in my case, is perjured. [Emphasis added.]
> * * * * *
>
> "Accordingly, in addition to withdrawing the Memorandum, I request that you issue a written retraction and apology to me and that you send a copy thereof to those who are listed as receiving copies of this letter.
>
> "Finally, please identify each other person (a) to whom you have distributed said Memorandum, or (b) to whom you have communicated, in words or substance, the statement attributing to me the "theft" of the documents, or from whom you have received such a statement." [Emphasis added.]

93. Greig's threat also was made shortly after he received a copy of my letter to Bratton dated October 30, 1998 that is quoted below at relevant parts (Exhibit P):

> "This is in response to your letter to Arthur W. Greig, Esq., dated October 23, 1998, with copies to Telesforo Del Valle, Jr., Esq., Professor Bruce Green, Martin C. Seham, Esq., and Joan C. Lipin.
>
> "Exception is taken to the letter as being untrue and defamatory, including the publication of your statements that "'the movement of the documents' by Ms. Lipin was a 'theft'," and referring to what you call "the theft issue." [Emphasis added.]
>
> * * * * *
>
> "Accordingly, I request that you modify your letter of October 23, 1998, and retract such statements.
>
> "Moreover, I again personally request that you withdraw Staff Counsel's Post-Hearing Memorandum dated September 3, 1998, in light of the false and defamatory statement at page 11, namely, "Lipin's theft of his adversary's papers," and the related false statements and misrepresentations therein and that you issue a written retraction and apology to me, and that you send a copy thereof to those who are listed as receiving copies of this letter."

94. To date my requests to Andral N. Bratton, Esq., remain pending.

95. Evidence of continuing retaliation that Arthur W. Greig, Esq., suppressed exculpatory evidence favorable to me, and instead relied upon the false and defamatory statements in Staff Counsel's Post-Hearing Memorandum, and specifically upon the false defamatory statement contained at page 11, namely, "Lipin's theft of his adversary's papers," and the related false statements and misrep-

resentations therein, is confirmed by the false and defamatory Greig Report.

III. IN THE INTEREST OF JUSTICE FINDINGS OF FACT ARE REQUESTED

96.In violation of equal protection of the law and due process I have been irreparably injured and will continued to be because there is no finding of facts as to:

(a) Whether the documents were open and unsealed, and without any mark of confidentiality?

(b) Whether the subject documents, which themselves were copies, were deliberately placed on the table in the location in which it was foreseeable that I would be sitting on June 28, 1991, by an attorney from the law firm of Weil, Gotshal & Manges, or by an associate of said law firm, or by an attorney from the law firm of Morgan, Lewis & Bockius?

(c) Whether the nature of the documents was such that they were unneeded for the hearing scheduled to occur on that date?

(d) Whether the contents of the documents were such that it was reasonably foreseeable that I would read them?

(e) Whether the documents were placed in front of me by defendant Lawrence J. Baer, Esq., or summer associate Hope Kertsman of the Weil, Gotshal & Manges law firm or by Christopher A. Parlo, Esq., of the Morgan, Lewis & Bockius law firm with personal malice toward me with the purpose and effect of causing extreme mental anguish and emotional distress to me?

(f) Whether the abandoned documents which themselves were copies where voluntarily returned by my attorney prior to settlement discussions and request that remedial

action be taken by defendant American National Red Cross against defendant Bender;

(g) Whether the nature of the settlement discussions that took place was consistent with the settlement discussions in the Chambers of Justice Moskowitz on May 13, 1991, *six (6) weeks prior to the appearance of the disputed documents*, when the Judge directed the defendants' attorneys to settle the case or it would be sent to trial;

(h) Whether the contents of the papers related to the allegations in Lipin v. Bender?

(i) Whether the documents contained information which had been determined not to be privileged because the Court had ruled that defendants had not met their burden (Order dated October 30, 1990; see Wall letter dated August 10, 1998 (Wall letter dated August 10, 1998, that states (Exhibit R annexed hereto) :

> "Upon the foregoing papers it is order that motions numbered 003, 004 and 005 are consolidated for disposition.
>
> "Defendants motion[s] to strike plaintiff's interrogatories and for a protective order is denied. Plaintiff's interrogatories and document requests are neither overbroad, onerous or an undue burden considering the nature of this action and the difficult, complex and sensitive issues of proof involved. CPLR 3101. Moreover, defendants have not met their burden of demonstrating entitlement to a protective order" (Emphasis added);

(j) Whether defendants Jacoby, Baer and Parlo previously consented to general references to the information contained in the documents in future court filings?

(k) Whether considering the nature and contents of the documents it was reasonably foreseeable that I would

read the documents, and temporarily retain them in order to obtain the advice of counsel with respect to my rights thereto and for my own protection?

(l) Whether the knowledge of the contents of the documents by the undersigned caused by the willful misconduct, gross negligence or neglect of counsel for defendants?; and

(m) Whether the disputed documents contained legal theories of an attorney that may be privileged?

IV. THE MOTION IS NOT MOOT BECAUSE STANDING IS SATISFIED AND THE ISSUES ARE RIPE

97. There is a real case and controversy before this court and, as required by Article III of the United States Constitution, (a) I have standing to adjudicate my claims, (b) I have alleged a personal injury in fact, (c) the injuries are fairly traceable to defendants' unlawful conduct, and (d) such injuries are likely to be redressed by equitable relief.

98. The cause and effect of the continuing unlawful acts involving malice, retaliation and tortious interference with professional relationships by defendants and those in privity have resulted in irreparable injury (a) to my health, (b) to my professional reputation as a health services provider in the health care industry, (c) to my professional relationships in the legal community and community at-large, (d) to my development as a lawyer, and (e) to my future earning capacity as a lawyer.

99. The causation of damages resulting from specific, real and imminent injuries are fairly traceable to defendants' acts and those in privity.

100. Standing for equitable relief to enjoin defendants and those in privity on the basis of partial injuries set forth below necessarily flow from defendants' outrageous and unfounded false and defamatory statements:

(a) public shame;

(b) injury to reputation;

(c) destruction of a chosen career in health care;

(d) disgrace and humiliation resulting from defamatory statements made by defendants with reckless disregard for the truth of the matter (i) concerning false charges of "theft" and "use" documents; (ii) the use of certain defamatory language in Red Cross' statements about me which stand on the record as being directly contrary to the statements of those individuals in Lipin v. Bender (Affs. 10/23/91; 10/30/91, annexed hereto as Exhibit S; Aff. 11/30/94 (Exhibit O), and in Edward Talvy v. The American Red Cross in Greater New York, Robert M. Bender, Jr., and Mary Stanton, Index No. 20623/90. Talvy is a case in which the defendants and their attorneys (defendants Jacoby and Baer) distorted the record by introducing material they knew to be false. (See Talvy affidavit sworn to July 12, 1991, and annexed hereto as Exhibit T;

(e) the diagnosis of Post-traumatic Stress Disorder and Major Depression by Stanley L. Portnow, M.D., as set forth in his report and evaluation dated July 14, 1990 (Not. App. 9/28/01, incorporated by reference, Exh. I annexed thereto):

"1. Ms. Joan Lipin suffers from (a) Post-traumatic Stress Disorder and (b) Major Depression.

"2. The above described sexual harassment of Ms. Lipin by Mr. Robert Bender was the proximate and casual factor in the development of the two above named psychiatric conditions";

(f) outrageous acts that go beyond any sense of common decency and tortious interference by defendants and those in privity with (i) my professional relationships in the legal community and the health care industry, (ii) my ability to develop a second career in the law; (iii) my present employment and lawyer's ability to protect my property interest by prosecuting this litigation; and (iv) my right to petition the court to redress my grievances by instigating a collateral attack in this court on the basis of ex parte receipt of the disputed documents, ex parte communications, fraud, deceit, dishonesty and collusion to manipulate the state court and the disciplinary proceeding instigated in secret against my attorney.

101. Defendants have engaged ex parte political interference with the course of justice in violation of Disciplinary Rules of the Lawyers' Code of Professional Responsibility NYCRR § 1200.36(a) [DR 7-105] which states:

> "A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." [22 NYCRR § 1200.36(a) [DR 7-105]

102. I have been, and continue to be, deprived of my constitutional and free speech First Amendment rights, Due Process and equal protection of the law.

103. That defendant Greig has attempted to shield himself, and the other named defendants herein, from liability on the purported grounds of judicial immunity or quasi-judicial immunity concerning his official capacity as Chair of the Hearing Panel amd is established to be a sham by his own admission that he did not have judicial authority (TR 12/10/97, p. 143):

> "MR. WALL: If the Panel will bear with me—I was about to call you, Your Honor, I'm so—

"CHAIRPERSON: We're just a Panel.

"MR. WALL: I beg your pardon?

"CHAIRPERSON: We're just a Panel." (Emphasis added.)

104. Moreover, Judicial notice is requested concerning the similarity of the words and substance of the language set forth in (a) the charges in the complaint against my attorney instigated by an unknown person or persons, (b) the Greig Report, (c) the Petition dated August 1, 2000, and (d) court papers filed by defendants and their counsel.

105. Accordingly, defendants' attempted usurpation of the jurisdiction of this court violates my First Amendment free speech rights, due process, equal protection, and privileges and immunities as well as my rights under the Fourth, Sixth, Seventh, and Eighth Amendments of the Constitution.

106. Defendants' collateral attack also is in violation of the following Disciplinary Rules of the Lawyers' Code of Professional Responsibility NYCRR § 1200.3(4)(5) [DR 1-102]; § 1200.33; § 1200.34 [DR 7-103]; § 1200.36 [DR 7-105]; § 1200.40(a) [DR 7-109]; and § 1200.42 [DR 8-101].

107. Clearly the law is that speech will be fairly characterized as a matter of public concern if it relates to any matter of political, social, or other concern to the community, and whether it involves a public concern is a question of law to be determined on the basis of (a) content, (b) form, and (c) context of a given statement, as revealed by the whole record.

108. See also Litigation, Vol 27 No. 2 Winter 2001, at p. 46 concerning the relevant First Amendment free speech issue involving the trial of John Peter Zenger who was able to obtain new counsel (Exhibit U annexed hereto).

V. INJECTION OF MATERIAL OUTSIDE THE RECORD IS PROHIBITED

109. It is a matter of law that the injection of material outside the charges is prohibited by law.

110. However, Staff Counsel Bratton and Sarah Jo Hamilton, Esq., engaged in such prohibited acts to aid and abet defendant Greig and the other named defendants as shown below:

(a) That the Hearing Panel Sanction Report dated March 14, 2000 ("Report") recommended a three (3) months term of suspension of my attorney under which he could have continued to represent me in this litigation since more than three months have now expired;

(b) That Staff Counsel Bratton, Esq., improperly injected my amended verified complaint and the pending motion dated November 3, 2000, filed in this court into the disciplinary proceeding instigated against my attorney;

(c) That said court papers are outside the nature of the charges filed by former Chief Counsel Hal R. Lieberman, Esq., and Andral N. Bratton, Esq., against my attorney in that proceeding;

(d) That said court papers are not relevant to said charges in that proceeding;

(e) That said court papers are outside the record in that proceeding;

(f) That said court papers were used by the Appellate Division after the record was closed for the purpose of enhancing the three (3) month recommended suspension against my attorney to a suspension of two (2) years; and

(g) That said Sarah Jo Hamilton, Esq., filed an affirmation with the Appellate Division, First Department in reliance thereof. (Exhibit V annexed hereto.)

111. But for defendants' ex parte manipulation of the state court proceeding, and those in privity,

(a) the suspension of my attorney would not have been enhanced from the recommended period of three (3) months to a suspension of two (2) years in the New York Courts;

(b) this Court would not have issued its order (Exhibit A annexed hereto);

(c) I would not be irreparably injured by being deprived of equal protection and the effective assistance of qualified counsel who is knowledgeable about the complex issues of fact and law that are involved in this litigation;

(d) defendants would not have attempted to usurp the jurisdiction of the United States District Court for the Southern District of New York to cause prejudice and to deprive me of my right to access the federal court and to petition the Court for redress of my grievances;

(e) defendants would not have attempted to deprive me of my constitutional free speech First Amendment rights, due process, equal protection of the law, and privileges and immunities;

(f) defendants would not have attempted to deprive me of my right to confront and cross-examine witnesses who are my accusers; and

(g)defendants would not have attempted to benefit from such collateral attack to thwart this Court's ability to reach and resolve the merits of the pending motion and this federal action.

112. Accordingly, defendants come to this Court with unclean hands.

113. Defendants' *mens rea* for the purpose of usurping the jurisdiction of this Court is in violation of the Lawyers' Code of Professional Responsibility, 22 NYCRR § 1200.34(a) [DR 7-103]; 22 NYCRR § 1200.42(a)(2); and 22 NYCRR § 12000.45(c) [9-101] which state, respectively and with emphasis added:

> "A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause." [22 NYCRR § 1200.34(a) [DR 7-103]
>
> * * * * *
>
> "A lawyer who holds public office shall not use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer. . . ." [22 NYCRR § 1200.42(a)(2)]
>
> * * * * *
>
> "A lawyer shall not state or imply that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official." [22 NYCRR § 12000.45(c) [DR 9-101]

114. That the motion also is not moot is established by the decision of the New York State Court of Appeals dated September 20, 2001, that states that the Appellate Division, First Department's order of suspension of my attorney dated March 8, 2001 (Exhibit W annexed hereto), is not yet "final." (Exhibit X annexed hereto, p. 2.) Further, the order of suspension of my attorney is subject to a pending appeal in the United States Court of Appeals for the Second Circuit.

115. It is within the broad equitable powers of the federal courts to issue a mandatory injunction. This would apply to the right to competent counsel as contemplated in federal statutes providing therefor in civil rights case.

116. That this court has jurisdiction to modify the discipline imposed upon my attorney Arthur M. Wisehart is governed by the Local Civil Rules of the Southern District of New York. Directly applicable is Local Rule 1.5(d)(2)(i)(ii)(iii).

117. That there was such an "infirmity of proof of misconduct" (Local Rule 1.5(d)(2)(i)) concerning the suspension of my attorney is established by the admitted standard of proof that Staff Counsel Bratton applied in the proceeding (TR 12/21/98, p. 381) that:

> ". . . for a [state] Disciplinary proceeding in this jurisdiction to stick, the burden of proof is by a fair preponderance of the evidence. It's not clear and convincing." (Emphasis added.)

118. I respectfully request that the Court exercise its discretion to reinstate my attorney Arthur M. Wisehart for the purpose of prosecution of this litigation so that I am not deprived of my constitutional right to assert and prosecute claims for the violation of federal rights under principles of right and justice.

119. The extensive background and experience that my attorney has acquired concerning this litigation is of crucial importance to the proper development and presentation of legal and factual issues that are pertinent thereto.

VI. LARGE FIRM INFLUENCE

120.Defendants conceal that I filed disciplinary complaints against Weil, Gotshal & Manges attorneys Lawrence J. Baer and Mark A. Jacoby, and Kevin P. Hughes, Esq., in 1992. (Exhibit Y annexed hereto.)

121.I filed the complaints on the basis of the false July 3, 1991 personal knowledge affidavits of Baer and Jacoby, and the false affidavit of Kevin P. Hughes sworn to November 30, 1992, concerning issues of fact that was filed by him in his

capacity as attorney of record in Joan Carol Lipin v. American National Red Cross, American Red Cross in Greater New York, Robert M. Bender, Jr., Mary Stanton, Mark A. Jacoby, Lawrence J. Baer, and Jesse D. Wolff, 92 Civ. 4455 (LBS).

122. Mr. Hughes also is the attorney of record in this litigation for defendants Lawrence J. Baer, Esq., Mark A. Jacoby, Esq., and American National Red Cross.

123. That the departmental disciplinary committee for the First Judicial Department declined to investigate my complaints against the big firm attorneys is established by the following letters of Hal R. Lieberman, Esq., former Chief Counsel, which state "Re: Matter of MARK A. JACOBY, ESQ., Docket No. 92.3858;" Re: Matter of LAWRENCE J. BAER., ESQ., Docket No. 92.3857;" and "Re: Matter of KEVIN P. HUGHES, ESQ., Docket No. 92.4658" (Letters dated 4/20/93, Exhibit Z annexed hereto):

> ". . . we have concluded that there is no basis for taking further action. This decision was based upon a number of factors, including the nature of your complaint, other priorities of the office, and prosecutorial discretion. You may, of course, pursue whatever remedies are available." (Emphasis added.)

124. Accordingly, I am pursuing prosecution of my claims against defendants Jacoby and Baer in this Court.

125. At this time I am not pursuing prosecution of my claims against Kevin P. Hughes, Esq.

126. I respectfully request, however, that Mr. Hughes and his law firm be disqualified from representing defendants Jacoby, Baer and the American National Red Cross.

127. The disabling conflicts of interest of Mr. Hughes and his law firm are set forth above.

A. Timing of the Compliant

128. Judicial notice is requested concerning the relationship of the timing of the dismissal of my complaints against the Weil, Gotshal & Manges attorneys by Mr. Lieberman, and his letter notifying my attorney that charges were filed against him and that a *sua sponte* investigation had commenced. The complaint is signed by Hal R. Lieberman, Esq., and Andral N. Bratton, Esq.,

129. Judicial notice also is requested concerning the fact that Arthur W. Greig, Esq., Andral N. Bratton, Esq., and Sarah Jo Hamilton, Esq. are listed as departmental disciplinary committee member and staff, respectively on the letter of Hal R. Lieberman, Esq., dated April 20, 1993 (Exhibit Z0, and on the Departmental Disciplinary Committee letter dated December 22, 1993, informing my attorney of the *sua sponte* investigation that had been commenced against him.

130. The timing of the complaint against my attorney also occurred shortly after motions were filed on my behalf to disqualify the law firm of Weil, Gotshal & Manges, and Kevin P. Hughes, Esq., attorney of record, in Joan Carol Lipin v. American National Red Cross, American Red Cross in Greater New York, Robert M. Bender, Jr., Mary Stanton, Mark A. Jacoby, Lawrence J. Baer, and Jesse D. Wolff, 92 Civ. 4455 (LBS) dated May 24, 1993, and Joan Carol Lipin v. American Red Cross in Greater New York, American National Red Cross, Robert M. Bender, Jr., James T. Byrne, Jr., Carl Desch, and Barbara E. Fletcher, 93 Civ. 1334 (LBS), dated May 20, 1993, that were *sub judice* in the federal court at that time.

131. That the file(s) containing my complaints against the Weil, Gotshal & Manges attorneys have been removed is established by the altered letter of Rebeca V. Taub to

defendant Baer dated January 25, 1994, that states (Exhibit AA annexed hereto):

> "Dear Mr. Baer:
>
> "These were the only letters in the file regarding disposition, and indicate both complaints were dismissed."

B. Jacoby's Threats In Open Court To Intimidate Justice Moskowitz

132. In violation of NYCRR § 1200.36(a), defendant Jacoby also threatened criminal prosecution against me and my attorney (a) when he threatened Justice Moskowitz in open court on July 11, 1991 by stating (TR 151):

> ". . . certainly we will be before the Appellate Division on this matter if control isn't taken of this proceeding, [Y]our Honor, and I don't mean that as a threat, of course.
>
> "THE COURT: It certainly sounds like it. Counsel, I am not going to listen to you if that is the way you insist on speaking;"

and (b) when Jacoby threatened that he and his law firm would use the Departmental Disciplinary Committee to take appropriate action against me and my attorney at point V of his letter (Ltr. 7/15/01, Exh. G annexed to Lipin Aff. 11/3/00, ¶ 52):

> "(V) . . . , defendants' counsel urges the Court not only to dismiss the Complaint, or, at least, disqualify plaintiff's counsel, but to do what the Appellate Division did in Matter of Beiny, after Sullivan & Cromwell sought reargument on the Court's decision to disqualify the firm as counsel in that case -- namely, to refer the matter to the Departmental Disciplinary Committee for investigation."

133. That the discriminatory practices against solo practitioners and the secret nature of the Departmental Disciplinary Committee are of great public concern is established by the recent comments of the newly elected President of the New York State Bar Association, Steven C. Krane. ("New State Bar President Champions Openness, Service," New York Law Journal, 6/11/01, p. 1.) Mr. Krane is "daring the profession to open its disciplinary proceedings to the public."

134. As a non-lawyer public citizen who is a victim of such closed-door secret proceedings there is no cause more noble than an attempt to maintain the integrity and honor of the State Bar Association.

135. If the proceedings instigated against my attorney had been open to the public, I am convinced that due process would not have been denied. Public scrutiny would have demanded dismissal of the charges because there was no contrary evidence in the record as to why and by whom those documents came to be irresponsibly placed in "that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 by 6 foot [conference] table." (Lipin v. Bender, 193 A.D.2d 424 (1st Dep't 1993); emphasis added.)

136. If the proceedings had been open, the Hearing Panel that made the finding that the dismissal of my sexual harassment case resulted in a "tragedy of epic proportions" (Report, pp. 11-12), would have ensured that remedial action was taken against the true culprits and their clients.

137. That the Association's House of Delegates has been asked to review the issue of opening attorney disciplinary hearings to the public at a recent meeting, further establishes the public concern.

138. Moreover, the news item entitled "Can the Bar Regulate the Large Firms," New Jersey Law Journal, p. 17, dated February 7, 1994, also establishes that such issue is a

matter of the public concern concerning disciplinary supervision of big firm attorneys (Exhibit BB annexed hereto). Further, the recent news item in Litigation News, September 2001, Vol. 26, No. 6, also is relevant and states at page 3 (Exhibit CC annexed hereto):

> "Perhaps one of the most heated and controversial issues for the legal profession is the monitoring and regulating of attorneys' conduct."
>
> * * * * *
>
> "The committee's recommendations underscore the complexity of issues associated with attorney disciplinary proceedings. 'There is a legitimate public interest in access to the information presented by these cases."
>
> * * * * *
>
> "'Only when there is a public reprimand or suspension or disbarment does the disciplinary action become public,' explains Bruce Green A. Green, New York City, Co-Chair of the Section's Law Schools Committee and a member of the ABA's Commission on Ethics. 'If it were open further, the argument is that there may be some reputational cost to the lawyer if the case were dismissed at the end.' On the other hand, Green argued, 'Everything is public. Civil lawsuits and criminal lawsuits are public. Some people are wrongly prosecuted and their reputations may be harmed in the process, but that is the system.'" (Emphasis added.)

VII. DEFENDANT INSURANCE COMPANY RESERVED CONCERNING MY CLAIMS OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND MENTAL ANGUISH

139. That the defendant insurance company reserved "its rights with respect to [my] claims for emotional distress,

mental anguish and intentional torts is established by the Red Cross defendants' Verified Responses to Interrogatory No. 17(e) in Lipin v. Bender, dated March 7, 1990 (Exhibit DD annexed hereto).

140. Further, as shown in the excerpts of the affidavit of Edward B. Talvy, and the policy of National Union Fire Insurance Company of Pittsburgh, PA, said defendant insurance company did not have a duty to defendant because defendant Bender was excluded from the definition of an "Insured Person" thereunder. (Exhibit EE annexed hereto, Exh. T annexed thereto.)[3]

VIII. A CLAIM FOR TORTIOUS INTERFERENCE BY DEFENDANTS IS ASSERTED

141. Evidence of my character as a professionally responsible individual is well established, and I have a good reputation for veracity and credibility.

142. Presently, I am a second year part-time evening student at New York Law School.

143. I was required to start a second career because my property interest, based upon my special knowledge, skill, experience, training and education acquired in health service, was destroyed by defendants and those in privity with them.

144. Defendants have direct knowledge that I am employed by Wisehart & Koch, that my attorney is a solo practitioner, and that his suspension threatens (a) my ability to earn a living, and (b) my ability to pursue the development of a second career in the law.

---

[3] Of note, the factual information set forth in the disputed documents is confirms the evidence that the defendants' Verified Answers are false to the direct knowledge of the defendants in this litigation.

145. The applicable law of tortious interference includes the tort of intentional interference with a prospective contract or business relation of third parties with a plaintiff.

146. As an alternative to malice, conduct that was dishonest, unfair, or fraudulent, also will serve as a basis for a tortious interference claim with prospective business advantage.

147. Further, tortious interference need not include malice if the intentional interference is otherwise improper.

148. The following factors to determine whether an actor's conduct in intentionally interfering is improper:

(a) the nature of the actor's conduct;

(b) the actor's motive;

(c) the interests of the other with which the actor's conduct interferes;

(d) the interests sought to be advanced by the actor;

(e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other;

(f) the proximity or remoteness of the actor's conduct to the interference; and

(g) the relations between the parties.

149. I had long-standing beneficial relationships in the health care industry. Defendants knew of these relationships since I was hired by the Red Cross for such relationships and for my knowledge of and experience in the health care industry.

150. I also have beneficial relationships in the legal community and I have standing in the community.

151. By virtue of the damage to my professional and personal reputation and good will, I have been effectively destroyed and have sustained injuries to my reputation as a direct cause of defendants' unlawful acts.

152. That damages are recoverable for such injury is well established by the authorities.

153. Punitive damages are also available for tortious interference. Clearly it is the law that punitive damages also are available for "oppressive conduct."

IX. The Probability of Success On The Merits Favors Plaintiff

154. The existence of irreparable injury in this litigation is established by the finding of the Hearing Panel of the Disciplinary Committee that a "tragedy of epic proportions" resulted from the dismissal of my sexual harassment case by the state court judge (p. 12).

155. Loss of First Amendment rights (counseling by law) constitutes *per se* irreparable injury to me.

156. The matter is ripe for consideration by this Court when "a threat of enforcement presently exists."

157. First Amendment rights are impaired if free speech is either threatened or in fact being impaired as the relief that is sought.

158. The burden shifts to the other side once the party has shown that it is deprived of protected First Amendment interest.

159. I am a non-party and private individual to the disciplinary proceeding ("proceeding") instigated *sua sponte* and in secret against my attorney.

160. My interests in this federal litigation are different from the interests of my attorney in that proceeding.

161. Accordingly, my interests in this litigation and pending motion were not represented in that proceeding.

162. The charges brought against my attorney, the proceeding, the Report, and decisions and orders of the Appellate Division and New York State Court of Appeals resulting therefrom do not implicate me.

163. Collateral estoppel also does not apply because the Appellate Division, First Department order of suspension of my attorney dated March 8, 2001 is not yet final.

164. I have been irreparably injured and will continue to be irreparably injured if the pending motion is not granted.

165. Defendants have not argued in this motion that my interests were represented in that proceeding. Accordingly, they are estopped from applying the law of *collateral estoppel* and *res judicata*.

166. Further, in violation of the Sixth Amendment of the Constitution of the United States I have been denied the right to confront and cross-examine witnesses who are my accusers.

WHEREFORE, based upon the foregoing showing, it is respectfully submitted that the motion for a preliminary injunction dated November 3, 2000, is not moot, and that such an injunction should be issued reinstating Arthur M. Wisehart for the purpose of continuing to represent me in this litigation.

Respectfully submitted,

Joan Carol Lipin
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894

Sworn to before me this ___ day of October, 2001:

_____
Notary Public

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

00 Civ. 3457 (MBM)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

- against -

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL and OFFICIAL CAPACITY,

Defendants.

AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Demands Trial by Jury

Plaintiff JOAN CAROL LIPIN by her attorneys, WISEHART & KOCH, as and for her amended verified complaint against defendants, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, in his individual and official capacity, alleges and states as follows:

Jurisdiction and Venue

1. Plaintiff Joan Carol Lipin seeks declaratory and injunctive relief, and compensatory and punitive damages under 42 U.S.C. §§ 1983, 1985, and 1986, and legal fees, costs and

expenses pursuant 42 U.S.C. § 1988. Plaintiff also seeks a preliminary injunction pursuant to Fed.R.Civ.P. 65 and 42 U.S.C. §§ 1985 and 1986.

2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1367(a) and 1343(a)(3), 36 U.S.C. § 2, and 42 U.S.C. §§ 1983, 1985, and 1986, under the equal protection, equal privileges and immunities, the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, and under the doctrines of supplemental and pendent jurisdiction including without limitation claims pursuant to Section 487 of the New York Judiciary Law, for libel, and for a continuing pattern or practice of retaliatory conduct violative of the Human Rights Law of the City of New York, Admin.Cod § 8-107, *et seq*. The amount in controversy exceeds the sum or value of $75,000.

3. Defendants' unlawful acts causing injury to plaintiff were willful and wanton, committed with personal malice in willful violation of law and public policy, and/or reckless disregard for the free speech, equal protection, due process, jury trial and other rights guaranteed to plaintiff by the Constitution of the United States.

4. Venue exists under 28 U.S.C. § 1391(b) and (e), because the acts and events giving rise to the claims pleaded herein occurred in New York County in the Southern District of New York.

The Parties

5. Plaintiff JOAN CAROL LIPIN is a female who is a citizen of the United States residing in the State of New York and County of New York.

6. Plaintiff Lipin is by training and experience a professsional administrator and manager in the field of health care services and holds a Master's Degree in Business Administration with a concentration in Health Care. She also studied

as a Special Graduate Student in Urban Studies and Planning at the Massachusetts Institute of Technology.

7. In the specialized field of health services and management, plaintiff developed and acquired a reputation for competence, diligence and ethical behavior.

8. Plaintiff was listed in *Who's Who of American Women*, Fourteenth Edition, 1984/1985. The certification of said publication states that inclusion therein "is limited to those individuals who have demonstrated outstanding achievement in their own fields of endeavor and who have, thereby, contributed significantly to the betterment of contemporary society."

9. As a result, plaintiff Lipin was hired as the highest ranking female senior executive officer at the American Red Cross in Greater New York ("New York Red Cross"), beginning her employment on January 6, 1986. Plaintiff was considered to be an "outstanding" professional employee and Red Cross executive as stated by its Director of Personnel, and was twice appointed Acting General Manager of the New York Red Cross.

10. Plaintiff nevertheless was suddenly and abruptly terminated on February 5, 1988 because she charged her immediate supervisor, Robert M. Bender, Jr., with sexual harassment and sexual discrimination, objected to his degrading and unlawful treatment of her and other female Red Cross employees, and requested an investigation.

11. Despite his recent appointment as Chief Executive Officer for the New York Red Cross, Bender was known to be "a number one womanizer," an executive who had inflicted a pervasively hostile work environment upon the female employees of the New York Red Cross, including plaintiff Lipin, contrary to Red Cross policy.

12. Because of her objections and complaints regarding the unlawful conduct of Bender, plaintiff Lipin thereafter was unable to secure employment in the health care industry, or any other industry, for which she searched with increasing anxiety and desperation for more than a year. The chosen career in health care of plaintiff Lipin was maliciously destroyed by the retaliatory acts of Bender and his agents, subordinates and associates in the Red Cross.

13. Because she was forced to remain unemployed, plaintiff sought a remedy by commencing litigation in 1989 in the New York Supreme Court, New York County.

14. The retaliatory acts of the Red Cross defendants and others did not cease thereafter, but instead escalated on a continuing basis.

15. Plaintiff Lipin would have commenced litigation sooner except that she was fraudulently deceived by the officers, agents and employees of the Red Cross into believing that they would assist her in obtaining another position that was equal to or better than her prior position with the Red Cross.

16. Defendants defamed and maligned plaintiff to other potential employers, and negated any such future employment opportunities, however, by surreptitiously defaming her to them, as plaintiff later learned, by saying that she was "dangerously crazy."

17. As a result of her reliance upon the false, fraudulent and deceitful assurances and representations given to plaintiff Lipin by defendants, their agents and employees, plaintiff frantically but unsuccessfully searched for other employment.

18. Twenty-five months after her unlawful termination, when she was heavily in debt, barely able to subsist from day to day, still out of work, and diagnosed as suffering from severe post-traumatic stress, plaintiff's counsel, out of com-

passion, offered her a clerical staff position at WISEHART & KOCH on or about March 10, 1990, and plaintiff accepted the position.

19. Defendant NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. ("National Union Fire Insurance Company") is incorporated in Pennsylvania with a principal place of business in that State.

20. On information and belief, the insurance company was a co-conspirator and acted as an agent of the Red Cross in financing the litigation costs in *Joan Carol Lipin v. Robert M. Bender, Jr., American National Red Cross and American Red Cross in Greater New York*, Index No. 15653/89.

21. In doing so, the National Union Fire Insurance Company conspired with defendant American National Red Cross, and with the defendant attorneys named herein, to authorize, approve and ratify the retaliatory actions perpetuated against plaintiff, including a hoax or gross carelessness involving the handling of documents by "big firm" attorneys, as set forth below, falsely stated to have been "stolen" by plaintiff and "privileged," in furtherance of which the insurance company is believed to have authorized, approved and paid exorbitant amounts to its attorneys for their services in connection with that litigation even though it knew or should have known that the Red Cross was not covered by insurance, for the acts alleged therein, or in *Joan Carol Lipin v. American National Red Cross, American Red Cross in Greater New York, Robert M. Bender, Jr., Mary Stanton, Mark A. Jacoby, Lawrence J. Baer, and Jesse D. Wolff*, S.D.N.Y., 92 Civ. 4455 (LBS).

22. Under the policy of insurance held by American National Red Cross, the National Union Fire Insurance Company was not subject to liability under that policy for the willful and unlawful conduct by plaintiff's supervisor Bender in inflicting a hostile work environment upon the female

employees of the New York Red Cross, in sexually harassing, discriminating and retaliating against plaintiff, and in violating her civil rights.

23. Defendant AMERICAN NATIONAL RED CROSS is a federal membership corporation created by an Act of Congress, 36 U.S.C. §§ 1-16, and is subject to being sued in this Court pursuant to 36 U.S.C. § 2.

24. American National Red Cross is an instrumentality and agent of the United States of America.

25. The headquarters and principal office of American National Red Cross is in Washington, District of Columbia.

26. American Red Cross in Greater New York ("New York Red Cross") is an agent and constituent unit of defendant American National Red Cross with offices at 150 Amsterdam Avenue, New York, New York 10023.

27. Defendant LAWRENCE J. BAER resides in the State of Connecticut, and is an attorney in the law firm of WEIL, GOTSHAL & MANGES LLP.

28. Defendant Baer and his law firm, WEIL, GOTSHAL & MANGES LLP, did and now continue to represent the New York Red Cross under the injunction issued by Justice Martin Schoenfeld on August 31, 1994, in *Joan Carol Lipin v. Robert M. Bender, Jr., American National Red Cross and American Red Cross in Greater New York*, Index No. 15653/89, that remains in effect.

29. Defendant MARK A. JACOBY resides in the State of New York, and was and is a partner in WEIL, GOTSHAL & MANGES LLP, and the supervisor of defendant Baer.

30. Defendant CHRISTOPHER A. PARLO is a resident of the State of New York, and is a partner of the law firm of MORGAN, LEWIS & BOCKIUS LLP.

31. Defendant Parlo and his law firm did and now continue to represent the American National Red Cross in *Joan Carol Lipin v. Robert M. Bender, Jr., American National Red Cross and American Red Cross in Greater New York*, Index No. 15653/89, Supreme Court, New York County, by virtue of the injunction that was issued by Justice Martin Schoenfeld on August 31, 1994, that remains in effect.

32. Defendant Parlo and his law firm, MORGAN, LEWIS & BOCKIUS LLP, also concurrently represent the named defendants in the presently pending litigation entitled *Polin v. Kellwood Company, Kellwood Sportswear, Enoch Harding, Jr., and Harry Holding*, United States District Court, Southern District of New York, 93-Civ-7876 (RO).

33. The plaintiff in said litigation, Charles S. Polin, also is a client of WISEHART & KOCH.

34. Defendant STEVEN R. WALL is a resident of Pennsylvania, and a partner in the law firm MORGAN, LEWIS & BOCKIUS LLP, who has actively represented the named defendants in the presently pending litigation entitled *Polin v. Kellwood Company, et al.*, United States District Court, Southern District of New York, 93-Civ-7876 (RO).

35. Defendant ARTHUR W. GREIG is an attorney at law who resides in the State of New York, New York County.

36.Defendant Greig also:

(a) Is Counsel for the Democratic County Committee, New York County whose leader is Hermann D. ("Denny") Farrell, Jr.;

(b) Has fiduciary duties to plaintiff in her capacity as an appointed member of the Democratic County Committee, New York County, by virtue of his position as Counsel to the Democratic County Committee, New York County;

(c) Is a Co-Chair of the Election Law Workshop that is sponsored annually by the New York Democratic Committee, New York County;

(d) Is a member of the Judiciary Committee of the Democratic County Committee, New York County;

(e) Has been the "Convenor," upon the recommendation of Denny Farrell, to the Democratic Judicial Convention for the 1st Judicial District, the Judicial District which includes the 77th Election District of the 73rd Assembly District to which plaintiff is, and has been, an elected judicial delegate, alternate, to the Democratic Judicial Convention, at which Democratic judicial candidates are nominated for the office of Supreme Court Justice;

(f) Is Co-Chair of the Law Committee of the Democratic County Committee, New York County;

(g) On information and belief, has received and held lucrative judicial appointments as a receiver and in other capacities in pending matters by virtue thereof;

(h) Is the Chair of a Panel of the Disciplinary Committee, Supreme Court, Appellate Division, First Judicial Department, that has been investigating a disciplinary matter involving plaintiff's attorney who has threatened certain imminent action in connection therewith;

(i) Is sued in his individual capacity pursuant to Section 487 of the New York Judiciary Law as an attorney who is both guilty of and has aided and abetted in deceit upon the Court and engaged in collusion with intent to deceive both (a) the court, and (b) the American National Red Cross, by perpetrating the deceit in an unissued Report signed by defendant Greig and dated March 14, 2000, derived from the false and perjured affidavits utilized by defendants Baer and Jacoby sworn

to July 3, 1991, and relied upon by themselves as attorneys, and by defendants Parlo and Wall, together with false and deceitful statements made by the same attorneys on a continuing basis thereafter, in order to obtain dismissal of plaintiff's meritorious cause of action against defendant American National Red Cross and Robert M. Bender, Jr., a top Red Cross executive involving the sexual harassment of plaintiff who objected to the repeated attempts by her supervisor, the Chief Executive Officer of the New York Red Cross, to force her, like other female Red Cross employees, to join Bender's harem not in a "romantic involvement," as falsely characterized by defendant Greig in his Report dated March 14, 2000, but as a sex slave;

(j) Involves a matter over which defendant Greig is without jurisdiction, because said Report signed by defendant Greig was maliciously prepared to further injure plaintiff, not a party to the proceeding before him, and makes false and defamatory statements about plaintiff based upon statements by defendants Baer and Jacoby in perjured affidavits sworn to by them that are falsely stated to have been made on the basis of "personal knowledge," but which false and fraudulent affidavits defendant Greig had failed and refused to investigate despite plaintiff's prior complaint regarding their falsity to the Departmental Disciplinary Committee, Supreme Court, Appellate Division, First Judicial Department; and

(k) Defendant Greig's malicious attack upon plaintiff Lipin also was made without jurisdiction because his motivating factor was an outgrowth of and in retaliation for her political activities seeking to bring about the merit selection of judges, rather than the disciplinary matter that was the pretext for his action, and in the process violated the liberty and property interests of

plaintiff Lipin, a non-party in that proceeding, and is in furtherance of an unconstitutional deprivation of the right of plaintiff Lipin to obtain a remedy for a sexual harassment claim that Greig found to have substantial merit.

FIRST CLAIM FOR RELIEF

DEFAMATION, INJURIOUS FALSEHOOD, AND OBSTRUCTION OF JUSTICE IN VIOLATION OF 42 U.S.C. § 1985(2)

37. Plaintiff realleges and incorporates by reference paragraphs 1 through 36 above.

38. Defendants Parlo and Wall have maliciously published statements about plaintiff in a Supplemental Memorandum of Law in Opposition to Supplemental and Amended Petition to Vacate Award in Arbitration, for a Stay and for Other Relief filed in *Polin v. Kellwood Company et al.*, 93 Civ. 7876 (RO), dated September 9, 1999, purporting to be factual, that were and are libelous *per se*, and recklessly defamatory as listed below:

> "During a pretrial proceeding in a case brought by her in New York state court, Ms. Lipin stole a stack of privileged documents from opposing counsel and gave to [sic] them to her then-attorney, Mr. Wisehart, who attempted to force a large settlement in that case based on the documents." [Supp.Mem. p. 10]

39. The same Memorandum dated September 9, 1999, written and published by defendants Parlo and Wall further defames plaintiff and her attorney by falsely stating that they "engaged in unethical conduct" and "gross ethical violations." [Supp. Mem. p. 10]

40. Said statements were and are false and constitute libel per se, and were known to be false when they were made by defendants Parlo and Wall on or about September 9, 1999, in that:

(a) Plaintiff Lipin did not steal the documents referred to;

(b) Plaintiff Lipin exercised her protected right to request that her attorney examine the documents and advise her concerning them;

(c) When she received and read said documents, plaintiff Lipin had no knowledge whatsoever that the documents were "privileged," and had no knowledge about the existence or nature of such a privilege when she read them;

(d) After plaintiff Lipin read the documents, she and her attorney returned to the conference room of Special Referee Birnbaum only to find that he had left early on his vacation, contrary to his earlier promise to remain available for any necessary rulings, so that the discovery of the documents could not be brought to his attention;

(e) Plaintiff's attorney secured a second opinion from another attorney corroborating her attorney's opinion that any claim of privilege had been waived, plaintiff authorized her attorney to notify counsel for defendants of the existence of the documents and to return them at the earliest opportunity for doing so subject to her claim of right;

(f) Plaintiff's attorney did not attempt to "force" a large settlement but instead remedial action was requested from the American National Red Cross, to no avail, when the documents were returned. To the best of plaintiff's knowledge, information and belief said documents were not privileged because the conduct of

defendants Parlo, Baer, and Hope Kerstman, Baer's law clerk, with respect to the documents was so careless as to indicate that they were not concerned with the protection of any asserted privilege, but had deliberately made the documents available to plaintiff by virtue of their lack of precautions to prevent disclosure, their failure to make any claim that the documents were missing, the fact that the documents contained information that Judge Moskowitz had previously ruled not to be privileged, and considering the nature of the information therein, in view of the overarching issue of fairness to plaintiff;

(g) defendants Parlo and Wall had personal and direct knowledge of the falsity and defamatory nature of the statements written and published by them in said Memorandum on September 9, 1999, because defendant Parlo, Wall's partner at Morgan, Lewis & Bockius, was present at the time that plaintiff Lipin received and read the documents that had been placed in front of her;

(h) Defendants Parlo and Wall knew or should have known that any claim of privilege was not applicable and/or had been waived in view of the circumstances presented;

(i) Said defendants conspired with defendants Jacoby and Baer, who were and are attorneys for defendants Robert M. Bender, Jr., and the American Red Cross in Greater New York in *Joan Carol Lipin v. Robert M. Bender, Jr., American National Red Cross and American Red Cross in Greater New York*, Index No. 15653/89, which remains pending due to the continuation of the injunction issued against plaintiff by Justice Martin Schoenfeld on August 31, 1994;

(j) At the time of the occurrence, defendant Parlo and his law firm Morgan, Lewis & Bockius were present as counsel and agents for defendant American National Red Cross;

(k) Defendants Parlo and Wall willfully and with malice aforethought failed to investigate the truth or falsity of said defamatory statements in their Memorandum published on September 9, 1999, based upon Parlo's direct and personal knowledge of the circumstances; and

(l) Said defendants, acting within the scope of their continuing retention by and as agents for American National Red Cross, maliciously libeled plaintiff Lipin with the false statement that she had "stolen" said documents.

41. Defendant Parlo has continued to perpetrate his and his Red Cross clients' retaliatory acts against plaintiff by attempting to destroy and ruin the law firm which is plaintiff's employer that also represents Charles S. Polin in an arbitration proceeding that is the subject of Mr. Polin's litigation by the defamatory statements in the Memorandum of Law dated September 9, 1999, signed by defendant Parlo.

42. As an attorney for the American National Red Cross, defendant Parlo participated in and acted in collusion to perpetrate the hoax involving the documents that Parlo and the attorneys who were his co-conspirators had placed in front of plaintiff and then used as a basis for the false claim that plaintiff had "stolen" them used to obtain the dismissal of plaintiff's claims for sexual harassment and retaliation that defendant Greig found to be meritorious.

43. With the motive of obstructing justice by destroying the law firm that is representing Mr. Polin in said litigation, or by making it financially impossible for the law firm to continue to represent Mr. Polin, or plaintiff, both of whom are known

to be without financial resources, Steven R. Wall, also a named defendant herein, and defendant Parlo's partner, transmitted a threatening financial demand letter dated August 5, 1999.

44. Defendants Parlo and Wall as attorneys demanded immediate payment of $145,452.68 from WISEHART & KOCH by no later than August 31, 1999, of funds that they knew not to be due, and that instead involved issues that remained pending in litigation.

45. Said letter further threatened that in the near future said defendants would "take appropriate legal action to enforce" payment of funds that said defendants knew were not due and owing.

46. The purpose and intent of said threat was to obstruct justice by crippling WISEHART & KOCH with the expectation that it thereby would be rendered disabled financially, and as a result it would be unable to prosecute the claims of its impoverished clients, including plaintiff, and Charles S. Polin, to a determination on the merits of their claims in the future.

47. The purpose and intent of defendants Parlo and Wall were to incapacitate WISEHART & KOCH from acting further as Mr. Polin's attorneys, or plaintiff's attorneys, and to destroy its ability ever to obtain a decision as to whether such punitive action by the panel of arbitrators was not wholly outside its jurisdiction, contrary to due process, and the evidence presented, or that the arbitration award that had been issued was subject to revocation because of corruption by bias and fraud.

48. Retaliation against plaintiff and the destruction of her present, or future employment opportunities anywhere has been, and continues to be a major objective of defendants Wall, Parlo and their law firm, as indicated by the false and

libelous statements about plaintiff in their Memorandum of Law dated September 9, 1999, filed in the *Kellwood* litigation.

49. The outstanding career record that plaintiff had developed prior to the period before she objected to continuing sexual harassment by a major Red Cross official is indicative of the malicious purpose and effect of the actions of defendants Parlo, Wall, Baer and Jacoby in their continuing actions intended to retaliate against plaintiff in order to destroy her career, to cause further irreparable injury to her health and well being, and to cripple and destroy her and her employer on a continuing basis to the present.

50. Acting within the scope of their retention by the Red Cross its attorneys and agents, said defendants wrongfully intended to, and did, cause irreparable injury to plaintiff in her trade, business and profession, and will continue to do so unless enjoined.

51. Said defendants Parlo and Wall, also acting as counsel for another client, Kellwood Company, made said false and defamatory statements and attempted to extort funds from plaintiff's employer for the purpose of tortiously interfering with plaintiff's livelihood, and causing prejudice to the pending case of another client brought by plaintiff's employer on behalf of an indigent client, Charles S. Polin, as shown by the additional false and defamatory statements in the Memorandum of Law written and published by defendants Parlo and Wall.

52. Said false and defamatory statements not only were filed with the court in the *Kellwood* litigation, but they also caused further injury and prejudice by being maliciously published by defendants to each of the parties and also to Jonathan S. Liebowitz, Kenneth D. Kleinman, and Martin Freeman who were involved in *Polin v. Kellwood et al.*, 93 Civ. 7876 (RO), as arbitrators.

53. The failure of defendants Parlo and Wall to conduct an adequate investigation of the underlying circumstances was aggravated by the fact that the documents that they falsely stated plaintiff had "stolen" contained maliciously false and defamatory statements purportedly made by Mary Stanton, the Director of Human Resources of the New York Unit of the Red Cross that had been:

> (a) surreptitiously made to other potential employers and, like a computer virus on the Internet, spread throughout the health care industry on a continuing basis, making it impossible for plaintiff ever to obtain another position in her chosen profession; and
>
> (b) also have been used to cause irreparable injury to the efforts of plaintiff to develop a new career in any other industry or profession, and in the law in particular.

54. The publication of such false and defamatory statements on a continuing basis as stated above indicates that the motive of defendants Parlo, Baer and Jacoby as attorneys representing the Red Cross was and is to retaliate maliciously against plaintiff and cause irreparable injury to plaintiff on a continuing basis indefinitely into the future.

55. Said statements about plaintiff Lipin that are libelous per se are an outgrowth of repetitive statements of defendants that were maliciously intended to, and did, constitute compounded and repetitive charges of multiple wrongful acts, dishonesty and general incompetence.

56. The compounding effect of the repeated publication of such false and defamatory statements about plaintiff Lipin is shown by their repetition by others including staff counsel to the Disciplinary Committee in a Post-Hearing Memorandum dated September 3, 1998, p. 11, referring to "Lipin's theft" of the documents that was submitted to and relied upon by defendant Greig in a Report by Greig dated March 14, 2000,

used by Greig to punish and destroy plaintiff Lipin as a known political opponent seeking to bring about the merit selection of judges, and bring an end to the present system that Greig has used to his profit and benefit in which the selection of judicial candidates is dominated by political bosses who are able to use their domination of political meetings, facilitated by defendant Greig, as described below, as well as their access to political "soft money" contributions for that purpose, which publishes said libelous statements by referring to the incident as involving "Lipin's theft" of the documents.

SECOND CLAIM FOR RELIEF

PURSUANT TO 42 U.S.C. §§ 1983, 1985, 1986 and 1988

57. Plaintiff realleges and incorporates by reference paragraphs 1 through 56.

58. As a corporation created and governed by federal law, the Red Cross is a federal instrumentality. As such, it is subject to suit 36 U.S.C. § 2, under 42 U.S.C. § 1983, as well as under 42 U.S.C. §§ 1985, 1986, and 1988.

59. The purpose and intent of the individual defendants in entering into said conspiracy with the Red Cross, Robert M. Bender, Jr., and the National Union Fire Insurance Company and in taking actions in furtherance thereof, was and is maliciously to impede, hinder, obstruct or defeat the due course of justice in said litigation with the intent and purpose to deprive plaintiff of her Constitutional rights, and in order to injure plaintiff Lipin by retaliating against her for her protected action and asserting a sexual harassment claim against Robert M. Bender, Jr., and for lawfully enforcing, or attempting to enforce her right to the equal protection of the laws.

60. In a Report published on March 14, 2000, defendant Greig defamed plaintiff further by repeating and publishing

the false and libelous statements that plaintiff engaged in the "theft" of the "stolen" documents and that her attorney had used the "stolen" documents.

61. The Greig Report dated March 14, 2000, also defames plaintiff by stating that the documents were "wrongfully obtained" by her, and by falsely stating that they were "priveleged." [sic]

62. The Greig Report dated March 14, 2000, nevertheless corroborates the validity and strength of plaintiff's sexual harassment claim, stating that plaintiff had been "poised to win" her sexual harassment case against the Red Cross, and admits that its dismissal constituted "a tragedy of epic proportions."

63. Defendant Greig's Report dated March 14, 2000, defames plaintiff further by falsely stating that plaintiff was "aware that [the documents] were privileged [and] understood the nature of the attorney-client privilege," whereas plaintiff's undisputed testimony was directly to the contrary, and defendant Greig also knew that plaintiff Lipin had received and relied on the opinions of two attorneys that were directly to the contrary.

64. The Greig Report dated March 14, 2000, although purporting to have been rendered under color of state law, acknowledges that plaintiff's liberty and property interests protected by the Fourteenth Amendment's Due Process Clause had been infringed by stating that plaintiff Lipin had been "poised to win" her case, and by confirming the merit and substance of plaintiff's claim for sexual harassment, discrimination and retaliation against Robert M. Bender, Jr., the Chief Executive Officer of the New York Red Cross, by mischaracterizing Bender's open and notorious misconduct with other female Red Cross employees, occurring at or about the same time that Bender attempted to coerce plaintiff into having *quid pro quo* sex with him, as a "romantic involvement."

65. The malicious motivation of defendant Greig toward plaintiff Lipin is shown by his mischaracterization of Bender's unlawful treatment of other female employees as being merely a "romantic involvement" rather than by accurately describing its true nature as an unlawfully hostile work environment for female employees that had been instigated by the Chief Executive Officer of the New York Red Cross to humiliate and entrap female Red Cross employees, including plaintiff, into a form of sexual slavery.

66. The resort to defamation to destroy the careers and reputations of female employees objecting to sexual harassment by their supervisor in violation of their liberty interests was perpetrated by Bender when he ordered plaintiff, in a staff meeting, to terminate another female employee because she objected to having sex with a Red Cross supervisor, using the false pretext that she had "stolen" Red Cross funds, although Bender made no secret in the staff meeting that Bender's true motivation in seeking that employee's discharge was that a male supervisor had complained to him that she objected to having *quid quo pro* sex with him. The falsity of the "stolen" funds pretext was discovered by plaintiff when she investigated the matter and rehabilitated the career of the female employee involved, shortly before Bender terminated plaintiff because she objected to sexual harassment by him.

67. Notwithstanding Bender's unlawful conduct in violating the liberty interests of Red Cross female employees, including plaintiff Lipin, as confirmed by the Greig Report the defendant American National Red Cross (a) has ratified and condoned such conduct, (b) has continued the employment of Bender in a top level position, and (c) has failed and refused to take any disciplinary or other action to rectify his misconduct, but also (d) has conspired with its attorneys and its insurer to retaliate against plaintiff Lipin by facilitating the further destruction of plaintiff's reputation,

and her career, and now seeks to destroy her present employment, her present employer, and also the capacity of her lawyer, who already has been severely punished by being unable to receive any compensation for his extensive services, to prosecute any further claims on her behalf.

68. In addition, plaintiff has a property interest in a claim against defendant Greig under Section 487 of the New York Judiciary Law.

69. Defendant Greig owed plaintiff a duty not to publish or repeat perjured statements by defendants Baer and Jacoby and their co-conspirators, suppress evidence or otherwise to obstruct justice.

70. His violation of those duties and plaintiff's liberty interests give rise to claims pursuant to 42 U.S.C. §§ 1983, 1985, 1986 and 1988.

71. Such violations are threatened and facilitated by the Greig Report, and permission is hereby requested to submit said Report dated March 14, 2000, under seal for consideration in support of plaintiff's request for a preliminary injunction based upon the extreme seriousness of the threats therein contained.

72.The Greig Report dated March 14, 2000, admits that the consequence of defendants' resort to defamatory statements about the circumstances under which the existence of the disputed documents came to the attention of plaintiff has caused extreme injury to plaintiff and to her present employment and finds the situation produced to have already involved "a tragedy of epic proportions," but nevertheless threatens drastic additional punitive action even though the Greig Report acknowledges that the issue involved "seemingly a matter of first impression" with respect to "a matter for which there is little clear precedent . . . ."

73. Plaintiff was denied due process of the law *inter alia* because she was deprived of a jury trial as to the falsity of the repeated statements by the attorneys who are defendants herein that she had "stolen" or "purloined" the documents, or "wrongfully taken" them, and/or that such documents were "privileged."

74. Plaintiff also was deprived of her liberty interest in due process of the law because the attorneys who made such defamatory statements were necessary witnesses under mandatory disciplinary rules applicable to them for unethical conduct, but no action was taken with regard to plaintiff's request that they be disqualified from participating as counsel in further proceedings.

75. That the attorney defendants defamed plaintiff Lipin by falsely stating that she had "stolen" the documents, and perjured themselves in the process, is refuted by the actual facts surrounding the incident:

(a) On June 28, 1991, plaintiff and her attorney entered Special Referee Birnbaum's conference room, 309m, 60 Centre Street, New York City, in connection with his rulings on issues pertaining to directions by the defendant attorneys to a Red Cross witness not to answer certain questions at his deposition;

(b) When plaintiff and her attorney arrived at approximately 9:30 a.m., on that day, attorneys Baer and Parlo, and Baer's assistant Hope Kerstman, a summer law clerk at Weil, Gotshal & Manges, Baer's firm, were already present, were standing on plaintiff's side of the conference room table, and previously had placed certain papers on the table at the location where, to their knowledge, plaintiff Lipin usually sat in conferences in such room;

(c) When plaintiff and her attorney entered the room, defendants' attorneys hastily walked to their side of the

table (on the left side of the Special Referee) without removing any of the papers neatly stacked on plaintiff's side of the table or even attempting to do so;

(d) Such papers (which were copies not the original documents) were neatly and openly stacked, right-side up at a location only about four inches from the edge of the table where plaintiff could not avoid seeing and reading them when she seated herself at her usual place at the conference table;

(e) At no time during the subsequent conference did any of the defendants' attorneys present request the return of the papers left on plaintiff's side of the table nor, indeed, during the extended period while the conference was taking place, did any of defendants' attorneys present even mention said stack of papers, although each such attorney carefully kept plaintiff Lipin under scrutiny throughout the conference;

(f) None of the papers or documents in the stack were in any way necessary to the proceeding that followed plaintiff's entry, and would not have been taken from any container or briefcase of any of defendants' attorneys, including defendants Baer and Parlo, for use in the proceeding, which dealt solely with rulings by Special Referee Birnbaum (i) regarding continuation of the deposition of the Treasurer of the New York Red Cross, (ii) regarding certain questions required to be answered by defendants, and (iii) also regarding the validity of the right of privacy claim asserted by Red Cross executive Robert M. Bender, Jr., as to the nature of his relationship with Barbara Fletcher, a claim previously asserted by Bender that his lawyers, including defendant Baer, are shown by what is said in the Greig Report dated March 14, 2000, to have known to be without merit (TR 6/14/91, pp. 360-61);

(g) Plaintiff unavoidably looked at the page on top of the stack of documents in front of her when the proceedings commenced and saw that it contained a statement purportedly attributed to a Red Cross executive that she was "dangerously crazy," a false and defamatory statement about her that was foreseeably guaranteed to focus her detailed attention on the other statements in the documents;

(h) None of the defendants' attorneys then present at any time said that the documents were missing or asked for their return, or attempted to stop plaintiff at any time from reading the documents, or from touching them or lifting up the papers, or from removing them from the table, and none of the documents in question was in any way labelled "confidential" or "privileged;"

(i) Subsequent to the above incidents, all of the parties present (except for the Special Referee) attended the continued deposition of Barnet Deutch, in a different room, on the fifth floor in the same building, but no request for return of the papers was ever made at any time, and defendants' attorneys never acknowledged them to be missing;

(j) Shortly after her attorney was able to obtain a second opinion about the matter over the weekend from another attorney, who concurred in his opinion that any claim of privilege had been waived, plaintiff nevertheless authorized her counsel to return the documents, and he did so;

(k) Defendant Baer thereafter submitted a personal knowledge affidavit sworn to July 3, 1991, to Justice Moskowitz then presiding over that matter, in which he stated falsely that the documents were in his brief case until the subsequent deposition on June 28, 1991, a statement provably false, and known to him to have been

false at the time he made it, since Baer himself had necessarily removed the documents from his briefcase in the earlier proceedings in the Special Referee's conference room;

(l) The perjured personal knowledge affidavit of Baer which is relied upon by the false personal knowledge affidavit of Mark A. Jacoby sworn to July 3, 1991, that is notarized by attorney Lawrence J. Baer, and therefore involves subornation of perjury by defendant Baer, was a fictional account by defendant Baer in an effort to cover up and conceal the fact that the episode involving the documents was a deliberate hoax perpetrated by attorneys Baer, Jacoby, and Parlo, defendants herein, as co-conspirators;

(m) The fact that plaintiff was intended by defendants' attorneys to see and have access to the documents in question in order to intimidate her, and her attorney, so as to prevent her from continuing with the prosecution of her lawsuit for sexual harassment is shown by the nature of their contents relevant to the intention of the Red Cross and its attorneys to resort to the "nuts or sluts" defense; and

(n) The purpose and intent of said attorneys of resorting to such a hoax in order to destroy the plaintiff's reputation and career and her property rights in her cause of action for sexual harassment is corroborated by the findings of defendant Greig in his Report dated March 14, 2000, that plaintiff's lawsuit had a strong basis for the recovery of damages for sexual harassment, and that found its dismissal constituted a miscarriage of justice that amounted to "a tragedy of epic proportions."

76. Plaintiff was denied equal protection of the laws when she filed a charge on October 22, 1992, with the Departmental Disciplinary Committee, Supreme Court, Appellate

Division, First Judicial Department, requesting that proceedings be commenced for the purpose of disciplinary action against attorneys Baer and Jacoby for filing their false affidavits sworn to July 3, 1991, in connection with the incidents involving the documents, but no investigation on plaintiff's complaint by the Disciplinary Committee was made regarding such false affidavits of attorneys because it had "other priorities" that it apparently considered to be more important.

77. Although the charge of perjury in a sworn statement by a President of the United States has been deemed sufficiently serious to warrant the institution of an extended investigation and impeachment proceedings, and as reported on page 1 in the *New York Times* of May 23, 2000, has caused the disciplinary committee of the Arkansas Supreme Court to recommend that the President be disbarred from practicing law in that State, the Departmental Disciplinary Committee, Supreme Court, Appellate Division, First Department, because of "other priorities," declined even to investigate plaintiff's claim that false affidavits had been used by a New York "big firm" lawyers, whose services are considered to be so valuable as to warrant charges of $300-$500 per hour, and more, in furtherance of a scheme to obstruct justice, and to retaliate against and smear, defame and ruin the reputation of a Red Cross employee known to be a victim of pervasive sexual harassment, and to obtain dismissal of her case on the basis of a conspiratorial hoax or the cover-up of their gross carelessness involving said documents by the use of false affidavits.

78. After declining to investigate plaintiff's charge concerning the use of false affidavits by Red Cross attorneys, the Disciplinary Committee that had sheltered the "big firm" attorneys from any investigation of their resort to provably false and perjured affidavits, as not being important enough to be among its "priorities," caused further injury to plaintiff in

furtherance of the retaliatory motivation by the "big firm" attorneys from WEIL, GOTSHAL & MANGES LLP, who had utilized such false affidavits, by commencing disciplinary proceedings against a small law office, plaintiff's employer, seemingly on a *sua sponte* basis, without any complaint whatsoever having been filed, under a notice dated December 22, 1993.

79. The bias exhibited by the Greig Report dated March 14, 2000, in favor of big firm lawyers such as WEIL, GOTSHAL & MANGES LLP, who can and do offer salaries to inexperienced beginners of over $100,000 per year, and profits to partners in the range of $1,000,000 per year or more, to conduct litigation, with or without merit, against small law firms such as WISEHART & KOCH that frequently are required to perform their services for victims of discrimination and civil rights abuses for nothing, or less than nothing, as in the protracted litigation involving plaintiff, constitutes a violation of the rights to equal protection of the laws of plaintiff and the class of other impecunious clients represented by the small law office representing her.

80. Wrongs that each of the defendants herein have conspired to commit, have committed, and are about to be committed for the purpose of impeding, hindering, obstructing, and/or defeating the due course of justice in the State of New York, with intent to deny and deprive plaintiff Lipin of the equal protection of the laws, and to injure plaintiff, her liberty and/or her property interests for lawfully enforcing or attempting to enforce the right of plaintiff to receive due process of the law, in violation of 42 U.S.C. § 1985(2) include:

> (a) A conspiracy involving the utilization of false affidavits by the attorney defendants herein, who are officers of the State Court as a matter of law, and whose actions therefore constitute state action, to obstruct and defeat the due course of justice for plaintiff who sought

to obtain a jury determination as to the merits of her claim of unlawful sexual harassment and sex discrimination, with the malicious purpose and intent of causing injury to plaintiff and to her property, for attempting to enforce her rights as a woman to equal protection of the laws;

(b) Said conspiracy involves the obstruction of the due course of justice by repeating and renewing the false and defamatory statements about plaintiff in said affidavits, and in memoranda based thereon, on a continuing basis;

(c) Said conspiracy included conduct by defendants Baer, Jacoby and Parlo that was so careless as to indicate that they were not concerned with the protection of the asserted privilege as to said documents but instead were acting in furtherance of a conspiracy to obstruct justice by entrapping plaintiff by making said documents available to plaintiff with the knowledge, purpose and intent that plaintiff would be unable to resist reading them and to intimidate plaintiff and her attorney in light of their libelous statements about her and her family with the expectation that they would be dissuaded from pursuing her meritorious claims for sexual harassment;

(d) Defendant Greig aided and abetted said conspiracy and acted in furtherance thereof, by relying upon said false and perjured affidavits of defendants Baer and Jacoby in preparing his Report dated March 14, 2000, but ignored the affirmation of Edmund Purves, Esq., dated July 22, 1992, and the testimony of plaintiff to the contrary, and failed and refused to allow adequate time for a hearing to be conducted to inquire into how defendant attorneys came to deposit said documents where they were available to plaintiff in violation of the obligation of due care respecting the handling of said documents, an issue that the Appellate Division, First Department, found to have been left open in its decision

dated May 11, 1993, in *Joan C. Lipin v. Robert M. Bender, Jr., et al.*, 193 A.D.2d 424, 425, 597 N.Y.S.2d 340, 343, when it said:

> "It is unclear why and by whom the documents were placed in that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 x 6 foot counsel [conference] table;" and

(e) The Greig Report dated March 14, 2000, compounds and aggravates the injury to plaintiff by purporting to justify and exonerate the defendants and their co-conspirators, whose actions were responsible for the dismissal of plaintiff's meritorious claims for sexual harassment, discrimination, and retaliation, on the basis of plaintiff's receipt of the documents placed in front of her by attorneys as a hoax, or as a result of carelessness so gross as to result in a waiver of any claim of attorney client privilege, and without any determination by a jury regarding the falsity of the personal knowledge affidavits of defendants Baer and Jacoby sworn to July 3, 1991.

81. By failing and refusing to withdraw affidavits known by them to be false, said defendants retaliated further against plaintiff by aiding and abetting defendant Greig and the staff of the Disciplinary Committee in threatening to destroy the continuing attempt by plaintiff, a person over whom they have no jurisdiction, to develop a new career by tortiously interfering with her present employment, and threatening to destroy, cripple or severely impair her attorney's continuing ability to practice law, and to service his needy clients including plaintiff.

82. Defendant Greig has knowingly aided and abetted said conspiracy by threatening to close down plaintiff's employer, and to make it impracticable for him to continue to service his

clients or practice law, particularly in light of the relatively short span of productive time available that foreseeably remains to him after nearly 45 years of practicing law. Defendant Greig's threatened action will cause irreparable injury to plaintiff, her employer, and to his needy clients, unless a damage remedy and injunction are provided pursuant to 42 U.S.C. § 1986.

83. Said threatened action also constitutes irreparable injury since plaintiff Lipin, whose date of birth is August 25, 1947, is seeking to advance her training and career opportunities by applying for admission to law school, but the repetitious publication of defendants' defamatory statements about her on a continuing basis will foreseeably derail that effort or cause her admission to the Bar to be irreparably injured even if she succeeds in being admitted to law school, after age 50, and devoting years of further effort and expense to studying law at night, and eventually seeking to pass the Bar Examination and obtain admission to the Bar.

84. By reasonable diligence, defendants could have prevented such injury:

(a) by taking adequate care and precautions with respect to the handling of the documents on which they have asserted a claim of privilege;

(b) by not submitting false, deceptive and defamatory affidavits on a repetitious and continuing basis;

(c) by disclosing in detail the circumstances of how the documents came to be placed in front of plaintiff;

(d) by conducting an adequate investigation of the peculiar circumstances applicable with emphasis on how the documents that had no relevance to the proceeding then pending came to be in court at all; and

(e) by terminating the Greig Panel's investigation particularly after the abrupt resignation or withdrawal of

Dr. Rachel Child, the only woman and non-lawyer on the Panel, since the Panel's mandated requirement that a non-lawyer be on the Panel was abrogated when Dr. Child abruptly resigned and withdrew, invalidating the entire proceeding, and after the Disciplinary Committee's subsequent rejection of the procedure represented by the Panel as being defective, inappropriate, inherently unfair, and lacking in due process.

85. Plaintiff's employer is the subject of defendant Greig's retaliatory threat to ruin his law practice, and trample upon the constitutional and civil rights and interests of his clients, but the motivating purpose and intent of defendant Greig and the other defendants is to destroy, demolish and ruin the efforts of plaintiff Lipin to develop a new career, and to continue to oppose defendant Greig's activities in furtherance of the continuing domination of the judicial selection and election process by political bossism in New York County.

86. That the motivation of defendant Greig was to punish plaintiff in furtherance of defendants' continuing program of retaliation for objecting to the sexual harassment to which plaintiff had been subjected, and that the Disciplinary Committee proceeding was viewed by him merely as a vehicle for crippling plaintiff's employer and destroying plaintiff's career is shown by the hostility of the statements made by defendant Greig in a telephonic conference call on November 4, 1998, in which defendant Greig explicitly stated, with great hostility, directly to plaintiff, that his purpose and intent were to make plaintiff Lipin suffer for what had happened.

87. As Chair of the Panel, defendant Greig purported to act under color of New York Law for the purpose of 42 U.S.C. § 1983, but defendant Greig had no jurisdiction to usurp that position to act in furtherance of a vendetta to punish plaintiff further orchestrated by the attorneys who represented the Red Cross and its insurance company, and in furtherance of his

own political interests to retaliate against and destroy plaintiff in retaliation for her exercise of her First Amendment rights to criticize the selection and performance of judges whom he and his political allies had participated in selecting.

88. Moreover, said attorneys who maliciously filed perjured affidavits and made defamatory statements about plaintiff are themselves deemed officers of the Court and therefore subject to liability for acting under color of New York Law pursuant to 42 U.S.C. § 1983.

89. The purpose and effect of the conspiracy and vendetta against plaintiff were to deprive her of constitutional rights to have her claims of sexual harassment, retaliation, and discrimination and denial of equal protection of the laws determined by a jury as is shown by the threats made by defendant Baer to plaintiff's attorneys in stating that if they persisted in appealing the dismissal of plaintiff's action, defendant Baer and his co-conspirators would initiate, implement or foster action to cause their disbarment so that they could no longer practice law, a threat that is now reaching fruition in furtherance of those threats in the form of the action threatened in the Greig Report dated March 14, 2000.

90. Specifically, defendant Baer stated on January 17, 1992, in the presence of and with the concurrence by an attorney from the law firm of MORGAN, LEWIS & BOCKIUS LLP, to plaintiff's attorneys who were present at the Appellate Division, First Judicial Department to file a Notice of Appeal with respect to the decision to dismiss plaintiff's case on January 9, 1992:

> "Mr. Baer: Are you sure you want to go ahead with this appeal?
>
> "Mr. Wisehart: Yes.
>
> "Mr. Baer: Well, it's your career."

91. Defendant Baer has personal knowledge that he made threats over the telephone to plaintiff's attorney with respect to filing a Notice of Appeal to the dismissal decision of January 9, 1992, on January 17, 1992, as follows:

"Mr. Baer: You're definitely going to appeal?"

"Mr. Wisehart: Yes."

"Mr. Baer: Well, your funeral."

92. Defendant Baer also made the following threats to Michael H. Prince, a former associate of the law firm who attended the hearing before the Appellate Division on January 17, 1992, with Mr. Wisehart in connection with the appeal of plaintiff's action in *Lipin*, as set forth in an affidavit prepared by Mr. Prince on or about January 17, 1992, that states:

"1. I attended along with Arthur Wisehart the hearing before the Appellate Division on January 17, 1992 in the above captioned matter.

"2. Also present at the Appellate Division on the case were Lawrence Baer, Esq. and Barbara Cummins, Esq., the attorneys for the defendants.

"3. While waiting for the Law Secretary to arrive and hear the case, Mr. Baer made a number of statements in my presence and also in the presence of Mr. Wisehart and Ms. Cummins.

"4. Mr. Baer said to Mr. Wisehart, "You should be worried to be in the Appellate Division because this is where the Disciplinary Committee is."

"5. Mr. Baer also said, "Are you sure you want to go ahead with this appeal?" Mr. Wisehart responded, "Yes" to which Mr. Baer replied, "Well, it's your career."

"6. Mr. Baer said to me, separately that I would be "looking for a new job after this is all done with." My

interpretation was that Mr. Baer was threatening to shut the office down, thereby putting me out of work and forcing me to seek other employment.

"7. Mr. Baer did not stop making his comments and he said to Mr. Wisehart, "I guess you have to do this to avoid malpractice."

"8. Mr. Baer continued and said to Mr. Wisehart, "You were lucky with the last court, but you won't be this time."

"9. During the conference before the Law Secretary, Mr. Baer was arguing over which day to submit their answering papers, and the Law Secretary became annoyed with him and said if you are going to persist in arguing, we might as well see the judge right now. In response Baer said "I don't think Mr. Wisehart will want to see the Judge."

"10. Also during the conference before the Law Secretary, Mr. Baer referred to the documents in question as "stolen."

"11. Following the conference, Mr. Baer made threatening comments to Mr. Wisehart about disciplinary proceedings based upon "your attempt to extort a settlement using stolen documents."

93. Attorney Prince is believed to have since left the legal profession for a career in journalism as a result of said threats.

94. Defendant Baer also has personal knowledge that Barbara M. Cummins, an attorney from MORGAN, LEWIS & BOCKIUS, was present for defendant American National Red Cross at the time he made such threats and attempted by extortion to cause plaintiff's attorneys to desist from prosecuting her appeal from the dismissal of her case by threatening their disbarment.

95. On information and belief defendant Greig and the staff of the Disciplinary Committee have engaged in *ex parte* communications on a continuing basis with the defendants who are attorneys since it is apparent from the contents of the Report dated March 14, 2000, that they had access to portions of the disputed documents that were not available to the plaintiff's attorney for the purpose of demonstrating that their contents were neither privileged nor confidential, and further that any such claim has been waived.

96. The Greig Report dated March 14, 2000, therefore constitutes conspiratorial action in furtherance of the threats as stated above by defendant Baer.

97. The continuing resort to such false and defamatory statements about plaintiff by defendants Baer and Jacoby thereafter is shown in a memorandum of law by them dated May 21, 1993, which accuses plaintiff of engaging in "misconduct," including ". . . the trampling of the attorney-client privilege by plaintiff," and charges her with having committed "wrongs," and engaged in "brazen misconduct" involving ". . . the Purloined Privileged/Work Product Documents." (pp. 6-10)

98. The Report of defendant Greig dated March 14, 2000, and the actions threatened thereunder are in furtherance of a conspiracy to aid and abet the prior threats by defendant Baer as stated above which were made with the purpose and intent of obstructing justice.

99. Defendant Greig is *functus officio* and without jurisdiction because his function and the panel that he chaired represented a procedure that had been abandoned, rejected and superseded on the basis that such procedure had been found to be defective and inherently unfair more than a year before Greig's Report dated March 14, 2000, was issued. Jurisdiction was lacking for the further reason that Dr. Rachel

Child had previously resigned or withdrew from the panel, and it therefore was not properly constituted when defendant Greig signed his Report on March 14, 2000.

100. In doing so, defendant Greig did not act with authority or jurisdiction but in furtherance of the conspiracy to retaliate against and destroy the career of plaintiff and to incapacitate her attorney, and is seeking to perpetuate a discredited procedure that has been rejected and abandoned by the Disciplinary Committee.

101. Plaintiff is an officer of the Lexington Democratic Club, and also a member of the Executive Committee of the Club, a leading political club on the Upper East Side of Manhattan since on or about 1993.

102. The Lexington Democratic Club has had a long tradition as a reform club founded to combat and oppose bossism in the process of judicial selection.

103. Plaintiff is well known in the Lexington Democratic Club for her advocacy of the merit selection of judges.

104. Defendant Greig is counsel to the Democratic County Committee, New York County, a lawyer who practices election law, and is believed to receive lucrative assignments from the courts as a Receiver of the Courts and benefits in return for his acts facilitating the domination of political bosses in the judicial selection process.

105. Defendant Greig has direct and personal knowledge of the status of plaintiff, who testified before him at the proceeding on December 10, 1997, that she is "an elected judicial delegate, alternate," and that "the function of that position is to qualify, to determine, [and] evaluate qualifications of judges." [Tr 156]

106. Defendant Greig is aware that he is a political adversary of plaintiff because his function and purpose have been to resist, impede and obstruct the reforms sought by plaintiff including the merit selection of judges. Defendant

Greig seeks to perpetuate the selection of such judges and judicial candidates on the basis of political considerations and contributions and the receipt of lucrative appointments, clients or favors that are made available as part of the process.

107. The action that defendant Greig has threatened against the law firm that represents and employs plaintiff was motivated by a desire to punish plaintiff for her objections to the manner in which Justice Karla Moskowitz was selected and elected shortly before her surprise dismissal of plaintiff's case.

108. Plaintiff's civic activities include that of an elected Judicial Delegate, Alternate, to the Democratic Judicial Convention. Plaintiff is, and has been, certified by the New York City Board of Elections and appointed by the New York State Democratic Party, to attend and/or vote for the Democratic nomination of judges at the Judicial Convention held in New York City. Plaintiff has been re-elected to this position for the 77th Election District of the 73rd Assembly District on a continuing basis since on or about 1995.

109. Since on or about 1995, plaintiff's civic activities also include appointment as a member of the New York Democratic County Committee, New York County.

110. Plaintiff Lipin has established a reputation as a crusader for reform and improvements in the judicial selection process.

111. As a Judicial Delegate, Alternate, plaintiff is known to have objected to the manipulation by political bosses of the procedures of judicial selection.

112. Plaintiff's free speech right to object to such politicized selection procedures for judicial candidates, in view of the irreparable injury to her that occurred as a result of the dismissal of her meritorious sexual harassment claim, is a protected free speech right under the First Amendment to the Constitution.

113. On July 8, 1991, Justice Moskowitz found against the Red Cross attorneys by deducing that the personal knowledge affidavits of defendants Baer and Jacoby sworn to July 3, 1991, upon which defendants Baer, Jacoby and Parlo relied to dismiss plaintiff's case, were false.

114. Justice Moskowitz sharply criticized the same attorneys on July 9, 1991, for not producing a witness for what had happened on June 28, 1991, and emphatically directed that discovery should proceed so that the case would be ready for trial.

115. On July 11, 1991, Justice Moskowitz stated;

> "THE COURT. Counselor [Mr. Jacoby] if I were the plaintiff—her testimony isn't that she stole papers, but that she sat down and the papers were in front of her, right?"
>
> "MR. JACOBY. Your Honor, these were papers on a counsel [conference] table. She didn't put them there. A lawyer put them there. Not her lawyer. The lawyer on the other side."
>
> "Now, I don't believe for one minute that this pile of papers were sitting directly in front of her in a neat pile facing her four inches off the table."
>
> "THE COURT. That is the testimony."
>
> "MR. JACOBY. I understand that."
>
> "THE COURT. You didn't bring anybody in to say that the papers were scattered, or the papers were on the other side of the table, or the papers were at the foot of the table, or the papers were in any other location. If I choose to believe the plaintiff than her testimony, and I was just looking for it, is that she sat down before argument started and when she sat down, right in front of her, four inches from the edge of the table, was a neat stack of papers." [TR 7/11/91, pp. 146-147]

116. Thereafter, in or about September 23, 1991, six judicial candidates sought to fill two vacancies on the State Supreme Court, New York County. Recently appointed Civil Court Judge Karla Moskowitz was not well known, and a relative newcomer to the list, but nevertheless received the nomination at the Democratic Judicial Convention on or about September 23, 1991, as a result of the political maneuvering and backing of Denny Farrell.

117. On information and belief, defendant Greig with the Party Chairman Denny Farrell was actively involved in securing such nomination for Justice Moskowitz.

118. The record shows that the East Side political clubs aided Democratic County Leader Assemblyman Herman D. Farrell in his efforts in 1991 to block Judge Gangel_Jacob from attaining nomination to the Supreme Court.

119. As stated in the *New York Law Journal*, p. 1, 8/28/92, "Last year, Mr. Farrell supported Justice Cahn, but shifted to Justice Karla Moskowitz in last_minute maneuvering when he saw he did not have enough votes to block Justice Gangel_Jacob."

120. Having suddenly received the nomination at the Judicial Convention, the election of Justice Moskowitz on or about November 4, 1991, was a foregone conclusion.

121. Acting Supreme Court Justice Moskowitz was inducted as a Supreme Court Justice in December 1991, and shortly thereafter dismissed plaintiff's claim in a surprise decision dictated extemporaneously into the record on January 9, 1992.

122. Defendant Greig, as Convenor of the Judicial Convention, called the "Roll Call." Therefore, before the preparation of his Report dated March 14, 2000, defendant Greig had personal knowledge that plaintiff attended the Judicial Convention on or about September 18, 1997, on or

about September 24, 1998, and on or about September 23, 1999. With respect to her participation in such proceedings, plaintiff received a letter from former Acting Justice Alice Schlesinger addressed to "Delegates, Alternate Delegates, and Democrats," dated September, 1999, and post-marked September 13, 1999, in which the judge states, "I applaud your involvement in judicial politics and I hope I can count on your support in being nominated as a candidate of the Democratic Party for the New York Supreme Court." (p. 2.)

123. Plaintiff had been informed that if she wanted to become a Judicial Delegate or an Judicial Delegate, Alternate, she would have to become an executive member of the Lexington Democratic Club.

124. It therefore was and is plaintiff's duty to observe and evaluate the qualifications, records and demeanor of judges and others who function in a similar capacity.

125. However, at the Judicial Convention on September 23, 1999, plaintiff objected to the qualifications of a certain judicial candidate. When plaintiff objected and stated that she could not vote for said candidate, she was told, "If you get to vote, you will vote for who we tell you to vote for."

126. On or about September 24, 1998, when plaintiff expressed her fear to a judicial delegate that Denny Farrell chooses judges who will deliver decisions in favor of politically powerful defendants, she was told "Oh, that means we must be "good Democrats" and that "otherwise Denny Farrell will make sure we lose our case."

127. Denny Farrell, with the assistance of defendant Greig, decides who will receive the judicial nomination at the Democratic Judicial Convention, and the political clubs are politically coerced into voting for the pre-chosen candidate.

128. Defendant Greig has personal knowledge with respect thereto, and direct knowledge that plaintiff Lipin has objected

to said process in nominating judicial candidates. The process is not democratic in nature but politically coercive. Fear of political retaliation and reprisal, together with concern for lucrative judicial appointments and "soft money" political contributions dominate said process.

129. Plaintiff personally delivered by hand a letter to defendant Greig on May 28, 1999, and requested an appointment with defendant Greig on the issue of "political payback" involved in such judicial selection process.

130. Defendant Greig failed to respond to the letter.

131. As an executive member of the Lexington Democratic Club, plaintiff seeks the merit selection of judges rather than on the basis of secret "deals" made with political bosses involving lucrative appointments and allocation of political contributions to defray campaign costs that presently prevails in New York County under Denny Farrell and his chief lieutenants.

132. Defendant Greig himself is believed to have received judicial appointments as a Receiver, and also performs services as the Counsel to the Democratic County Committee, New York County, has assisted in preserving the status quo and retaliating against persons such as plaintiff and others who seek to bring an end to the political patronage system for electing judges and to replace it with a merit selection system.

133. Defendant Greig is well aware of plaintiff's activities in this regard and has seen plaintiff at various conventions and other meetings at which plaintiff is seeking to act in furtherance of the merit selection of judges.

134. Defendant Greig has threatened to take devastating action against plaintiff's employer and attorney in order to silence plaintiff or discredit plaintiff so that he can incapacitate her and discredit her efforts to bring about the merit selection of judges.

135. Defendant Greig has attempted to suppress and violate plaintiff's First Amendment rights which were exercised in connection with certain affidavits that plaintiff prepared in furtherance of the prosecution of plaintiff's sexual harassment claim and were used by him to attempt to extort from plaintiff's attorney a statement that would impair and repudiate the credibility of plaintiff's affidavits and irreparably cause injury to plaintiff's Constitutional rights by showing "remorse" for plaintiff's exercise of her constitutional rights to free speech.

136. Such coercive tactics are employed by Denny Farrell and defendant Greig at the political judicial conventions and by their lieutenants who are present and who make it a point of coming to delegates and ordering them to vote for certain judges with the implied threat that if they do not do so, retaliatory action will be taken to destroy their political careers.

137. Such conspiracy also includes the alliance of defendant Greig with the "big firm" attorneys including those from WEIL, GOTSHAL & MANGES who are defendants in this case, particularly when they are acting for or receiving payments from large and politically powerful insurance companies such as defendant National Union Fire Insurance Company.

138. Because of the political clout that such "big firm" attorneys are deemed to have, an attorney representing prior counsel in proceedings before Mr. Greig stated in plaintiff's presence that it would be "suicide" to go up against said attorneys from WEIL, GOTSHAL & MANGES by

(a) calling Edmond Purves, Esq., as a witness to give testimony as to his belief and conclusion that the documents had been placed in front of plaintiff Lipin deliberately by the attorneys from that firm as part of an entrapment scenario, and

(b) requiring the production of the documents in the proceedings before Mr. Greig so that plaintiff could show that the documents contained nonprivileged materials that indicated an intention of pursuing the "nuts or sluts" strategy in order to destroy plaintiff in connection with, and in retaliation for plaintiff's sexual harassment and retaliation claims.

139. In furtherance of said conspiracy, defendant Greig has failed and refused to consider evidence concerning the falsity of the affidavits that said attorneys have submitted, and has failed and refused to require proceedings to be instituted against them under the clear provisions of Section 90 of the New York Judiciary Law mandating such proceedings.

140. Defendant Greig in addition has failed and refused to determine that said attorneys should be disqualified from having any further basis for representing the interests that they did represent in obtaining the dismissal of plaintiff's sexual harassment claim so that said dismissal can be invalidated on such grounds under *Chang v. Chang*, 190 A.D.2d 311, 597 N.Y.S.2d 692 (1st Dep't 1993).

141. On information and belief, defendant National Union Fire Insurance Company has been heavily involved in supporting the selection of judicial candidates through political bosses, directly and indirectly, through political contributions made by them or in their interests by attorneys and others affiliated with them, with the purpose and intent of obtaining favorable treatment in decisions in which insurance liability is a factor, including in the Lipin case, in which the insurance company is believed to have paid all of the exorbitant fees for the defendant attorneys involved in the extended litigation that they immensely profited from by virtue of their careless handling of the documents or entrapment scenario, even though on information and belief the insurance company had

no liability to American National Red Cross for such claims or actions under its policy, and is a co-conspirator with the "big firm" attorneys involved as described above.

142. By paying such fees, at rates believed to be from $300 to $500 an hour for performing services in connection with matters in which it had no liability, said attorneys were expected to use the funds to advance the interests of the insurance company predominantly in the strategies and actions taken in connection with the litigation brought by plaintiff, even though such actions were contrary to the official policies of said Red Cross defendants, and also contrary to their interests because:

(a) said litigations undoubtedly could have been settled, as Justice Moskowitz had previously directed, on May 13, 1991, for a small fraction of the lavish fees that were paid to the law firms of MORGAN, LEWIS & BOCKIUS and WEIL, GOTSHAL & MANGES for the services that defendants Parlo, Baer, Jacoby and others performed for them or in their interests on an unethical basis by utilizing false affidavits;

(b) Justice Moskowitz also denied on May 13, 1991, defendants' motion for a protective order with regard to certain document requests, including document request number 5, namely, "All documents that refer to Joan Carol Lipin following her termination," that had first been made on May 11, 1990, and ruled that the objections by defendants were made too late;

(c) such actions were and are contrary to the well settled principles applicable to such affidavits and to such lawyers having conflicting interests; and

(d) said lawyers should have been disqualified from participating further in such litigation under well-established principles as necessary witnesses as to the details as to how the documents came to have been

placed before plaintiff, but Justice Moskowitz failed and refused to rule on plaintiff's motion for that purpose and instead punished plaintiff by the judge's surprise and novel dismissal of plaintiff's case.

143. Said actions were and are violative of plaintiff's rights as set forth in 42 U.S.C. § 1985 because:

(a) they were based upon the existence of a continuing conspiracy by defendants;

(b) having the purpose and effect of depriving, directly or indirectly, plaintiff of equal protection of the laws, in violation of her liberty and property interests, and also her privileges and immunities under the law as well as her right to due process, and her jury trial rights with respect to her claims for sexual harassment, discrimination and retaliation;

(c) the co-conspirators and the other conspirators have committed repeated acts in furtherance of the conspiracy for the purpose of destroying plaintiff, her career, plaintiff's attempt to develop a new career, plaintiff's political efforts in favor of the merit selection of judges, and causing further injury to plaintiff's health and her condition involving severe post-traumatic stress syndrome, and plaintiff's ability to obtain effective legal representation;

(d) plaintiff has been injured in both her person and her property and has been deprived of having and exercising her right to a hearing with the safeguards of due process of law and before a jury with respect to her meritorious claims as set forth above; and

(e) the Red Cross officials including Robert M. Bender, Jr., have knowingly and maliciously adopted procedures and condoned actions of harassing, humiliating and demeaning women employees and treating

them as quasi-slaves or "trophies" (i) to be used for their own aggrandizement, titillation, amusement and ego satisfaction (ii) in furtherance of the complete humiliation, abasement, and exploitation of those female employees, and (iii) who actively have engaged in the destruction of the careers, health and reputation of any such employees who object, and who seek to bring an end to such unlawful acts and practices of sexual harassment and discrimination.

144. The threatened attempt of defendants to destroy plaintiff's present employer, as well as plaintiff's livelihood and present and future career prospects, on the basis of (a) plaintiff's exercise of her First Amendment free speech rights, (b) the false and defamatory contention that plaintiff was chargeable with respect to wrongful conduct regarding documents that implicate the Red Cross, its attorneys and its insurance company with the intention of causing further injury to plaintiff by resorting to a defamatory "nuts or sluts" defense in connection with her meritorious claims of sexual harassment, discrimination and/or retaliation, and (c) the gross negligence or willful misconduct of the attorneys of defendants in placing the documents containing information of irresistible interest to plaintiff in a location readily accessible to plaintiff, containing statements guaranteed to ensnare her attention, and in a manner inconsistent with the contention of said attorneys that said information was privileged, have the purpose and effect of preventing or hindering the duly constituted authorities of the State of New York from giving or securing to plaintiff the equal protection of the laws, together with the subsequent acts of defendants Greig, Parlo, Wall, Jacoby and/or Baer, or each of them, as pleaded above, that have caused, and continue to cause irreparable injury to plaintiff, and threaten to do so permanently into the indefinite future as aided and abetted by the Greig Report dated March 14, 2000, unless and until defendants' actions are permanently enjoined.

145. Said acts have deprived and continue to deprive plaintiff of her rights and privileges as a citizen of the United States, including without limitation, (a) her rights of free speech, equal access to the courts, (b) the right not to have valuable property interests and claims taken away without due process of the law guaranteed by the Fifth Amendment, (c) the right to be represented by counsel guaranteed by the Sixth Amendment, and not to be victimized by attorneys of conflicting interests who willfully and repetitively file false affidavits, yet are not disqualified as necessary witnesses as required by the rules applicable to the conduct of attorneys, in furtherance of their intent to destroy plaintiff, aided and abetted by payments from an insurance company that has no interest in the merits of the case except to facilitate the malicious motive of defendants to punish and destroy plaintiff, her employment, her career, and her civil rights.

146. Plaintiff requests recovery of the damages occasioned by each such injury or deprivation against each and every defendant named herein on the basis of joint and several liability as provided in 42 U.S.C. §§ 1985 and 1986, and an injunction against the irreparable injury currently threatened in furtherance of said unlawful conspiracy in accordance with 42 U.S.C. § 1986.

THIRD CLAIM FOR RELIEF

RETALIATION

147. Plaintiff realleges and incorporates by reference paragraphs 1 through 146 above.

148. The malicious purpose and intent of defendants was and is to destroy plaintiff, her reputation as an employee, her present employment, her prospects for employment or career in the future and to incapacitate her attorney so that she will be unable to prosecute her claims in the future.

149. Said acts that defendants conspired to and did commit against plaintiff involve retaliation against her by improperly resorting to the "nuts or sluts" defense to a claim of sexual harassment by virtue of defendants' attempt to portray plaintiff as a "slut" or even a criminal by falsely stating that she had engaged in "theft" involving "stolen" documents that were falsely claimed to be privileged.

150. Defendants have followed a pattern or practice of destroying the careers, health and reputations of persons who engage in the protected activity of charging them with unlawful discrimination and civil rights practices by falsifying their work records and employment history.

151. To plaintiff's direct knowledge, defendants conspired to and did engage in such tactics repeatedly not only with plaintiff Lipin but also with respect to former employees including Edward B. Talvy, the former Director of Personnel who was responsible for pioneering the development of the EEO program of the New York Red Cross but who was hounded and harassed by high pressure coercive tactics, including defamatory job performance statements, that ruined his health (heart attack, stroke and related complications) and forced him to leave the Red Cross and his profession as a Human Resources administrator when he resisted the coercive attempt of the New York Red Cross at the behest of Robert M. Bender, Jr., plaintiff's former supervisor, to sign or approve a defamatory statement about Ms. Lipin.

152. Said defamatory statement about plaintiff Lipin stated that it was "PREPARED AT THE REQUEST OF WEIL, GOTSHAL & MANGES," the law firm of defendants Jacoby and Baer.

153. Mr. Talvy objected to said defamatory statement about plaintiff Lipin because it was untrue and said that she had been an "outstanding" Red Cross employee.

154. Mr. Talvy was requested to sign said false and defamatory statement about plaintiff for use in the litigation that plaintiff Lipin had brought seeking a remedy for the acts of sexual harassment, discrimination and retaliation that had been perpetrated against her by her supervisor Bender.

155. Mr. Talvy's refusal to permit defendants' agents and employees to extort from him a false and defamatory statement about plaintiff Lipin resulted in a vendetta against Talvy's continuation as a Red Cross professional conducted by Bender and other Red Cross executives that resulted in ruining Talvy's health, and destroyed his career in Human Resources, and forced Talvy's further humiliation by accepting a demeaning entry level position in an unrelated field entirely alien to his training and experience in Human Resources.

156. Similar acts were perpetrated by said defendants, including defendant Jacoby, to plaintiff's direct knowledge against another former Red Cross executive, William Lattimore, with the result that he was forced to leave the Red Cross with his career and health ruined, despite his disability.

157. Another similar act took place when Robert Bender, the Chief Executive Officer of the New York Red Cross, sought to force plaintiff to fire a younger woman employee who objected to sexual harassment by a Red Cross supervisor on the basis of the false charge that she had stolen Red Cross funds. Plaintiff investigated the matter and determined that no theft involved by the Red Cross employee had taken place, and therefore declined to terminate her.

158. Within a short time thereafter, plaintiff herself was terminated by Bender following her objections to sexual harassment by him, following which his attorneys similarly defamed her by falsely referring to the documents as "stolen," as described above, and continue to retaliate against her by reviving and republishing the defamatory statements at every

opportunity as set forth in the First Claim for relief set forth above, and as perpetuated in the Greig Report dated March 14, 2000.

159. The malicious and retaliatory motive of defendants is a result of plaintiff's engaging in a protected activity by objecting to and making charges against the Red Cross and Robert M. Bender, Jr., involving sexual harassment of plaintiff, discrimination, and retaliation against female employees by interfering with their prospects for future employment by the tactic involving the repetitious making of statements that were defamatory and constituted injurious falsehoods to prospective employers.

160. On July 12, 1999, plaintiff made a further application for employment at the Red Cross but said application did not receive any consideration or a response of any kind.

161. Each and every defendant was and is aware that plaintiff was engaged in protected activity by making and prosecuting her claims and charges.

162. Each and every defendant was and is aware that plaintiff's charges had substantial merit.

163. Each and every defendant was and is aware that plaintiff was and is irreparably injured by their retaliatory actions, and that the effect of what occurred has been to result in what the Greig Report dated March 14, 2000, found to be a "tragedy of epic proportions" causing irreparable injury to plaintiff, her person and her property, yet said defendants, despite such knowledge, have failed and refused to take any remedial action with respect thereto because each and every defendant maliciously did and does continue to intend to inflict upon plaintiff a "tragedy of epic proportions" both now and into the foreseeable future.

164. There is a causal connection between said adverse actions by defendants and each of them and the protected activities of plaintiff as alleged above.

165. Said continuing adverse retaliatory actions were committed by defendants and each of them under an ongoing policy of discrimination and retaliation under which victims of discrimination and retaliation who object are destroyed, and under which any remedial action is blocked and sabotaged, as here, and its perpetrators such as plaintiff's former supervisor Robert M. Bender, Jr., were, are and continue to be promoted, rewarded and falsely extolled as a role model by an eminent not-for-profit organization that creates and utilizes the false and fraudulent image of personnel probity as a basis for the solicitation and donation of huge sums of money from the public.

166. Defendants' unlawful acts causing injury to plaintiff were willful and wanton, committed with personal malice and hostile animus toward plaintiff, a person who has exercised her free speech and constitutional rights in deliberate violation of law and public policy, and/or reckless disregard for the rights of plaintiff.

167. Plaintiff is a person aggrieved by unlawful retaliatory practices perpetrated by defendants and entitled to commence a civil action pursuant to Section 8-502 of the amended Human Rights Law of the City of New York for the judicial remedies provided thereunder.

168. Said retaliatory acts of defendants also are violative of the Human Rights Law of the City of New York, N.Y.C. Admin. Code § 8-107, *et seq.*

169. Punitive or exemplary damages are requested in the amount of $5,000,000 or such greater amount as shall be required, in light of defendants' income and assets to deter each defendant, and those who may be induced to collude and conspire with them, from engaging in such reprehensible conduct in the future.

REMEDIES REQUESTED

170. Plaintiff requests the following remedies for the injuries to her person and property on the foregoing claims as pleaded above:

(a) Damages for plaintiff's loss of earnings, injury to earning power, and injury to reputation computed by doubling the salary that Robert M. Bender, Jr., required the Red Cross to pay Barbara Fletcher largely for her entertainment value to him. Plaintiff's services were worth at least double Fletcher's salary to the Red Cross since Fletcher was known to have interfered with, and effectively destroyed the accounting and financial system of the New York Red Cross and also largely destroyed plaintiff's extensive work product for the Red Cross. Such damages are calculated by doubling Fletcher's salary which is believed to have been $45,000 per year and adding one-third to reflect the value of fringe benefits and expenses, which would produce $120,000 per year, and deducting therefrom plaintiff's subsequent earnings;

(b) The addition of interest to the amount calculated as set forth above to the date hereof at the rate of 9% per year compounded;

(c) The addition of damages for injury to the future earning capacity of plaintiff for the remainder of her worklife expectancy using the "zero offset" method in order to adjust for future promotions or increases in earnings that would have occurred from the date hereof, using Robert M. Bender's salary figure as indicative of what the value of plaintiff with the benefit of her present background and experience would be to the Red Cross, compared with what the Red Cross has seen fit to pay Robert M. Bender, Jr., an employee known to have acted contrary to law and also contrary to Red Cross policy procedures and purposes on a continuing basis;

(d) Compensatory damages for injury to health and well-being of plaintiff caused by the effect of substantial stress on a continuing basis and her reduced life expectancy in view of her post traumatic stress syndrome in the amount of $500,000, or such other and further amount as shall be proved at trial;

(e) An order requiring defendants Lawrence J. Baer, Mark A. Jacoby, Christopher A. Parlo, Steven R. Wall, and Arthur W. Greig to withdraw the false and defamatory statements about plaintiff that they have published which have caused and continue to cause injury to plaintiff, her career, and her personal and professional reputation in the community;

(f) An order enjoining Lawrence J. Baer, Mark A. Jacoby, Christopher A. Parlo, Steven R. Wall and Arthur W. Greig from causing further injury to plaintiff or to her reputation, her person or property; from publishing any statements in furtherance of the scheme to defame her and ruin her reputation and future career opportunities as alleged above; and from taking any action to retaliate against plaintiff for engaging in the protected activity of prosecuting any claims for violation of her civil rights, including but not limited to the litigation herein;

(g) An order enjoining Arthur W. Greig from causing further injury to plaintiff or to her reputation or her person or property from issuing any reports or statements in furtherance of the scheme to defame her and ruin her reputation and future opportunities for the development of her career as alleged above, and any and all persons who have or may in the future aide or abet his actions or threats in that connection, or that are about to be committed pursuant to 42 U.S.C. §§ 1983, 1985 and 1986;

(h) An order assessing punitive damages jointly and severally against National Union Fire Insurance Company and individual defendants Greig, Parlo, Wall, Baer and Jacoby, in the amount of $5 million dollars, for their willful and malicious acts to obstruct justice, and for the purpose of impeding, hindering, obstructing or defeating the due course of justice with respect to the constitutional rights of plaintiff and others whose careers have been or in the future may be similarly ruined by the conspiracy on the part of the insurance company, the lawyer defendants, and other co-conspirators who are well aware from other cases in which they have been involved that the practice of the law firm representing plaintiff is to represent clients whose financial resources have been destroyed by practices that are in violation of their civil rights and discriminatory in nature, and who are unable to pay for such services on a current basis, particularly when forced to encounter the resort to "litigation by attrition" tactics practiced by said insurance companies and attorneys in order to impede, hinder, obstruct, or defeat the course of justice with the malicious purpose of injuring with the intent of denying such citizens the equal protection of the laws because of their financial need and lack of comparable resources and to injure such persons including plaintiff in their property for lawfully enforcing or attempting to enforce their rights to the equal protection of the laws, in violation of 42 U.S.C. § 1985(2);

(i) Said conspiracy, practice and procedure is against public policy because it is facilitated and financed by National Union Fire Insurance Company, on information and belief, acting in concert with other insurance companies and large law firms, pursuant to understandings under which said insurance companies pay large amounts of money, in the range of $300-500 per hour, to such attorneys on a current basis in the guise of

defending such claims with knowledge, as here, that the actions they are defending are unlawful and involve a direct violation of the policies of the nominal defendant, American National Red Cross, with respect to the misconduct of the executive responsible, all for the purpose of incapacitating plaintiffs such as plaintiff and her attorney so that they will be unable to pursue such claims through the destruction of their financial resources, careers and reputation; and

(j) A judgment for treble damages and attorney's fees against defendant Greig pursuant to Section 487 of the New York Judiciary Law.

WHEREFORE, plaintiff respectfully requests that a judgment and appropriate orders be entered proving the relief requested above, that reasonable attorney's fees, costs and expenses be awarded to plaintiff, and that such other and further relief be granted, as may be determined to be just and proper.

Dated: May 24, 2000

WISEHART & KOCH

Arthur M. Wisehart (AMW 4003)
19 West 44th Street
Suite 412
New York, New York 10036
(212) 730-0044

Attorney for Plaintiff

APPENDIX L

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Dk. No. 02-7493

In re JOAN CAROL LIPIN
(Amended and Revised Based On New Developments)
Petitioner,

JOAN CAROL LIPIN,
Plaintiff-Appellant,
-against-
NATIONAL UNION FIRE INSURANCE CO., *et al.*,
Defendants-Appellees.

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT:

Joan Carol Lipin, Petitioner pro se, respectfully petitions for a writ of mandamus pursuant to 28 U.S.C. § 1651, and/or makes a motion pursuant to Fed.R.App. P. 27(b), and Fed.R.App.P. 21(c), 28 U.S.C. §§ 144, 455(a), and 455(b)(1), Canon 3 B(3) and 3 C(1) of the Code of Judicial Conduct (29 McKinney's Cons.L. N.Y., Appendix), directed to the United States Court of Appeals for the Second Circuit, and the Hon. Chester J. Straub, Judge for (I) an order vacating the Order dated May 14, 2003, denying the motion dated May 5, 2003, pursuant to 27(b), to vacate and modify the Order dated April 23, 2003, to stay the mandate under Fed.R.App.P. 41(d)(a), to compel the New York State Attorney General, Eliot Spitzer, to file a response in view of new evidence, to reinstate the appeal and to disqualify the Hon. Chester J. Straub pursuant

to 28 U.S.C. §§ 144 and 455(a) and (b)(1) and (2), and for an order vacating the Order dated March 28, 2003, denying the motion dated March 17, 2003, to recall and stay the mandate and vacate the order of dismissal, orders that were entered without any hearing, briefing, or argument whatsoever, and without even requiring the submission of opposing papers, (II) for an order vacating the Order dated February 26, 2003, dismissing the appeal without any hearing, briefing or argument, allegedly "because it lacks an arguable basis in fact or law," relying upon the obviously inapplicable case of Pillay v. INS, 45 F.3d 14, 17 (2d Cir. 1995), and improperly denying "as moot," without any hearing or explanation, the motion dated February 3, 2003, to compel disclosure and to rectify the Court's file and to remand to the district court for certain determinations including motions requiring the mandatory disqualification of opposing counsel which were improperly denied as "moot" by the district court in violation of Petitioner's due process rights, and (III) vacating the stays and other orders, including the Order dated April 23, 2003, heretofore entered in the above entitled appeal, and providing such other and further relief as to this Court may seem just and proper, including a remand to the district court directing that discovery be provided and findings thereon as to the ability of defendant-appellee Arthur W. Greig to claim judicial or official immunity as a means of escaping from liability or responsibility for my claims as pleaded in my amended verified complaint filed in this litigation.

Petitioner's Appendix of Pertinent Documents submitted with Petitioner's writ of mandamus and/or motion are attached thereto as Exhibits A through G and those documents are incorporated by reference herein together with the record in this Court in Joan Carol Lipin v. National Union Fire Insurance Company of Pittsburgh, Pa., Lawrence J. Baer, Mark A. Jacoby, Christopher A. Parlo, Steven R. Wall, American

National Red Cross, and Arthur W. Greig, in his individual and official capacity, Dkt. No. 02-7493, and in the district court, Dkt. 00 Civ. 3457 (LTS)(DFE).

JOAN CAROL LIPIN, under penalty of perjury, pursuant to 28 U.S.C. § 1746, hereby verifies that the statements of fact set forth below made in support of her petition and/or motion are true and correct:

This court has subject matter jurisdiction over Petitioner's Notice of Appeal and Amended Notice of Appeal dated and filed April 26, 2002 and October 7, 2002, respectively, and this writ of mandamus and/or motion is timely.

My original petition and/or motion was filed in this Court on May 27, 2003.

I respectfully submit and file this amended petition and/or motion on the basis of new developments and information that just became available to me on May 28, 2003 and May 29, 2003. Because of space limitations, statements regarding some of the factual matters in my initial petition and/or motion not included herein, but are incorporated by reference.

NEW DEVELOPMENTS

On May 28, 2003, the United States Supreme Court issued a decision in Nevada Department of Human Resources v. Hibbs, __ U.S. __, 71 U.S.L.W. 4375, 2003 U.S. LEXIS 4272 (May 27, 2003), for the first time holding (6-3) that under Section 5 of the Fourteenth Amendment, federal jurisdiction exists for suits involving state action that is violative of the rights of women who are victims of discrimination to equal protection of the laws. My amended verified complaint in this litigation specifically alleges violation of my equal protection rights as a result of sexual discrimination, sexual harassment and retaliation occurring on a continuing basis up to the present time, as a result of the destruction of my career in health services caused by defendants-appellees, as I seek, as

an older person, to develop a new career by going to law school. In addition, and because such violations were directly caused by defendant-appellee Greig, acting under color of state law, also deprived me of counsel in this case, my due process rights were violated. See Complaint at ¶¶ 47, 59, 64, 73-74, 76, 79, 80, 84, 87, 89, 112, 135, 143-45, 166, Exhibit A of Appendix). I respectfully submit, therefore, that the "heightened scrutiny" standard of review mandated by the majority opinion in the Supreme Court in its decision of May 27 in Nevada Department of Human Resources, supra, 2003 LEXIS 4272 at [*13] is applicable to this appeal, and requires this petition for a writ of mandamus and/or motion to be granted.

In addition, pursuant to Rule 201 of the Federal Rules of Evidence, judicial notice is respectfully requested regarding the item from the front page of the New York Law Journal for May 29, 2003, involving statements by the Mayor of New York at a meeting of the Association of the Bar of the City of New York expressing concern about the crisis of confidence that exists concerning the integrity of the judicial process in New York City. To my direct knowledge this is a result of political activities of the kind that are engaged in by appellee Arthur W. Greig, as alleged in my complaint (Complaint at ¶¶ 36, 56, 85-87, 103-138, 141, 143, Exhibit A of Appendix). His involvement in such activities should result in the estoppel of appellee Greig to his claim that he is insulated by the doctrine of judicial or official immunity for his misconduct or for the continuing irreparable injury caused by him and his counsel, New York Attorney General Eliot Spitzer, that I or my attorney should be subjected to unconstitutional prior restraints and sanctions imposed by the district court at their behest, without a hearing, on account of our objections to such improper conduct in violation of our constitutional rights.

I. ISSUES PRESENTED

A. Whether Petitioner was entitled to have her appeal heard and determined on the merits in this Court. See FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 230-31 (1990)(quoting Allen v. Wright, 468 U.S. 737 (1984)(alteration in original); and Thompson v. County of Franklin, 15 F. 3d 245, 248 (2d Cir. 1994).

B. When monetary sanctions and an order involving prior restraint infringing upon free speech rights have been imposed upon Petitioner by the district court without a hearing and an opportunity to be heard in violation of her First Amendment and Eighth Amendment rights, whether this Court abrogated its appellate function and Petitioner's constitutional rights by failing to hear and review this appeal, and by failing to apply the dual requirements of review, as it must, under "heightened scrutiny" when violations of equal protection of the law are involved, and "strict scrutiny" when prior restraints and violations of First Amendment free speech rights are involved. See Alexander v. United States, 509 U.S. 544, 550 (1993).

C. Whether this Court is required to vacate the mandate and reinstate Petitioner's appeal because the Order dated February 26, 2003, dismissing the appeal is inconsistent with the Court's Order dated April 11, 2003, granting Petitioner's motion dated April 4, 2003, that the district court's order imposes an unconstitutional prior restraint upon Petitioner in violation of her First and Fourteenth Amendment rights because the permanent injunction is void on its face, vague and ambiguous, and void for the further reason because defendants-appellees Greig, Parlo, Wall, and the National Union Fire Insurance Company of Pittsburgh, PA., do not have standing in this Court with respect thereto because they did not seek sanctions or an injunctive relief in the district court, or provide notice thereof, and because no hearing was provided with respect to such punitive action in violation of well

established due process requirements. See Coates v. City of Cincinnati, 402 U.S. 611 (1971).

D. Whether this Court is required to hear and review the district court's orders dated September 25, 2002, and March 28, 2002, and whether it violated its constitutional responsibility as an appellate court by denying as "moot" Petitioner's motions to disqualify opposing counsel notwithstanding the continuing applicability of an injunction and punitive sanctions against Petitioner obtained from the district court by those very same attorneys. See Burnett v. Physicians Online, Inc., 99 F.3d 72, 76 (2d Cir. 1996), quoting Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976).

E. Whether Judge Straub's refusal to disqualify himself is reviewable by mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651, which provides

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> "(b) An alternative writ or rule nisi may be issued by justice or judge of a court which has jurisdiction.

See La Buy v. Howes Leather Co., 352 U.S. 249 (1957); and Roche v. Evaporated Milk Ass'n, 319 U.S. 21 (1943).

II. Reasons For The Granting Of The Writ Of Mandamus And/Or Motion, And Statement Of Pertinent Facts

The Supreme Court has mandated that "justice must satisfy the appearance of justice." See Offutt v. United States, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S.Ct. 11 (1954). In addition, the appearance of bias test for disqualification has been raised to the constitutional level in cases involving a pecuniary interest, however small, on the part of a judge by Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437 (1927), which holds

that when there is "the slightest pecuniary interest" on the part of the judge, a decision is required by the Fourteenth Amendment to be set aside.

The Court specifically rejected the contention in that case that the compensation involved there was "so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty." This is a constitutional principle in the case of courts. Commonwealth Coatings Corp. v. Continental Casualty Co, 393 U.S. 145, 148 21 L.Ed. 2d 301, 89 S.Ct. 337 (1968). The Court stated that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." Id. at 150. (Emphasis added.) The issue of judicial disqualification is appropriate to address in a writ of mandamus. In re United States, 666 F.2d 690 (1st Cir. 1981). See also In re Allied-Signal Inc., 891 F.2d 967 (1st Cir. 1989); United States of America v. Robert E. Cooley; Ronald L. Talyor; Gary P. Leber; Merri W. Turner; and Charles W. Matson, U.S.C.P. (10th Cir.) 1993 LEXIS 18062 (July 19, 1993). In Rosen v. Sugarman, 357 F.2d 794, 797 (2d Cir. 1966), Judge Friendly stated:

> "[W]e can think of few situations more appropriate for mandamus than a judge's clearly wrongful refusal to disqualify himself."

See also In re International Business Machines Corp., 618 F.2d 923, 927-928 (2d Cir. 1980); Berger v. United States, 225 U.S. 22, 36 (1921); Olson Farms, Inc. v. United States, 429 U.S. 951 (1976). In Apple v. Jewish Hospital and Medical Center, 829 F.2d 326, 332-333 (2d Cir. 1987), this Court held that:

> "Section 455(a) provides that a judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (Emphasis added.)

Thus it is not necessary that actual bias or prejudice be shown, only that the judge's impartiality might be reasonable questioned. See Liteky v. United States, 510 U.S. 540 (1994). This standard requires Judge Straub's mandatory recusal pursuant to Section 28 U.S.C. 455(a) under the criteria which are emphasized in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 859-860 (1988), upon the strong showing set forth in my affidavits submitted herein without opposition, and also in the pertinent documents attached as Exhibits A through G set forth to the Appendix submitted herewith, including Petitioner's Petition for Rehearing with Petition for Hearing En Banc dated December 23, 2002 (Exhibit E of Appendix), and the Petition for Rehearing and Hearing En Banc dated March 12, 2003 (Exhibit 1 of Exhibit C of Appendix). Berger v. United States, 255 U.S. 22, 41 S.Ct. 230, 65 L.Ed. 481 (1921); Church of Scientology of California v. Paulette Cooper, 495 F. Supp. 455, 461-2 (D.C. Cal. 1980)(recusal is "prudent" under Canon 3 C(1) of the Code of Judicial Conduct and 28 U.S.C. § 455(a), and "the sensitive nature of the case itself"). See also Apple, supra, (829 F.2d at 333)("the substantive standard for recusal is whether a reasonable person, knowing all the facts, would conclude that the court's impartiality might reasonably be questioned"), and this Court's holding in United States v. Lovaglia, 954 F.2d 811, 815 (2d Cir. 1992).

Accordingly, the adjudicative responsibilities of this Court and its appellate obligation to afford to Petitioner a "full right to be heard according to the law" have been abrogated by this Court. A writ of mandamus is available in such circumstances under the All Writs Act, 28 U.S.C. § 1651. See McClellan v. Carland, 217 U.S. 268, 281-82 (1909).

The "Heightened Scrutiny" Doctrine Requires Consideration of Petitioner's Claims on The Merits

Petitioner has a constitutional right to "heightened scrutiny" of abusive gender discrimination causing her to be

deprived of equal protection of the laws, including retaliatory actions to intentioned to deprive her of her employment, her counsel, and her ability to achieve her goal to practice law, in view of the Supreme Court's decision issued on May 27, 2003, in Nevada Department of Human Resources v. William Hibbs, _ U.S. _, 71 U.S. L.W. 4375, 4377, 2003 U.S. LEXIS 4272, and making it impossible for her to effectively prosecute her federal constitutional claims founded upon such rights.

This Court's action of staying the appeal without a motion to do so by my adversaries, and its refusal to hear my appeal on the merits, has deprived me of my constitutional rights. Since an Article III Court requirement of "injury in fact" has been met, it is clear that I have standing to assert a constitutional right to appellate review of my claims on the merits. Secretary of State v. Munson, 467 U.S. 947, 955-56 (1984).

Furthermore, the district court committed reversible error in relying upon Younger v. Harris, 401 U.S. 37 (1971), since my rights arising under Section 5 of the Fourteenth Amendment make that decision inapplicable, and also because my complaint seeks to procure injunctive and declaratory relief against defendant-appellee Greig, who wrote and issued the Report dated March 14, 2000. Greig is not immune since he did not and could not have performed a judicial function under the provisions of the New York State Constitution.

That this is so is confirmed by this Court's recent decision in Toussie v. Powell, 323 F.3d 178 (2d Cir. Mar. 20, 2003), and the applicability of the act of state doctrine to defendant-appellee Greig for the purpose of a claim under 42 U.S.C. § 1983.

The denial as "moot" of my motions to disqualify Attorney General Spitzer and his office as Greig's counsel on the basis of conflicts of interest involving the financial factors applicable both to himself and defendant-appellee Greig under the

holding in Tumey v. Ohio, 273 U.S. 510, 524 (1927), has resulted in a denial of my First Amendment rights in view of the continuing effect on me of the district court's injunction as a prior restraint upon my free speech rights.

In addition, both Greig and Spitzer are precluded from functioning in an official capacity in view of the applicable provisions under Section 20 of Article VI of the New York Constitution providing that a person performing judicial functions may not (N.Y. Cons. Art. VI § 20(b)(3),(4) (McKinney 1997)):

> "(3) hold any office or assume the duties or exercise the powers of any office of any political organization or be a member of any governing or executive agency thereof;
>
> "(4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his judicial duties." (Emphasis added.)

The partisan political interests in which defendant-appellee Greig and Attorney General Spitzer actively promote, involving lucrative pecuniary and political interests for both of them, in view of the readily available soft money that has developed among the partisan judicial deal makers such as appellee Greig and Spitzer have not been disputed on the record, and the "heightened scrutiny" requirements of the Nevada Department of Human Resources case, supra, also have been violated.

In addition, disqualification is required in view of the connections between appellee Greig, his attorney Spitzer, and the information provided about Judge Straub that is available on the Internet, namely, that he (Exhibit A of Appendix):

> ". . . served as Chair, First Department Judicial Screening Committee, (1983-94); Chair, New York State

> Statewide Judicial Screening Committee (1988-94); * * * Past Member from New York, Democratic National Committee; Special Master, by Designation of New York Appellate Division, First Judicial Department, for Volunteer Program to Assist Supreme Court in Certain Motion Dispositions; the Governor's and Chief Judge's Appellate Division Task Force."

See also the excellent extended analytical discussion by Mark Andrew Grannis, entitled "Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum: A Due Process Approach to Improprieties Arising from Judicial Campaign Contributions from Lawyers," 86 Mich. L. Rev. 382, 418 (1987).

In addition, since affidavits have raised material issues of disputed fact as to whether I am the direct object of the retaliatory action at issue, namely, a continuing conspiracy involving retaliatory acts that are aided and abetted by defendant Greig and his counsel, Attorney General Spitzer, for the purpose of imposing a prior restraint upon me in violation of my constitutional and free speech First Amendment rights, the appeal must be reinstated and the case remanded to the district court for appropriate findings of fact. Lerman v. Bd. of Elec., 232 F. 3d 135 (2d Cir. 2000)(the court "must draw some significance from the fact that [plaintiff] [was] a direct object of the action at issue.").

As a result of the New York State Attorney General's deliberate deceit on behalf of his client, Arthur W. Greig, with whom he has impermissible conflicts of interest as they relate to this litigation, Eliot Spitzer has abused his office and the trust of the citizens of New York by diverting state money in order to impose a prior restraint upon me and to deny to me my federal and state constitutional rights to have my federal claims adjudicated in federal court. Accordingly, this Court's and the district court's prior restraint on Petitioner's First Amendment free speech rights constitutes irreparable injury.

Elrod v. Burns, 427 U.S. 347, 373 (1976) Further, the overly broad and vague inunction imposed upon Petitioner is void for impermissible vagueness and because it fails to satisfy the "narrow specificity" requirements regarding limitations on First Amendment rights, NAACP v. Button, 371 U.S. 415, 433 (1961), and because of violation of the "strict scrutiny" analysis that is required. See Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 206 (Thomas J., concurring) (1999).

I have standing to assert my claims without interference from the state, Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002), by an attorney general who not only has irrebuttable conflicts of interest, but who is exercising his powers as an elected state office for personal gain in consideration of his own pecuniary and political interests and for the purpose of depriving me of my free speech, due process and equal protection rights. See also Republican Party of Minnesota v. White. 536 U.S. 765 (2002); Worth v. Selden, 422 U.S. 490, 506 (1975). Therefore, unless this petition for a writ of mandamus and/or motion is granted, I will be a person with a constitutional right to be heard on the merits of my civil rights claims but without a remedy for the obstruction of justice and denial of equal protection of the laws perpetrated upon me, as well as upon the Court, by my adversaries and their counsel as part of an on-going conspiracy maliciously to retaliate against me in order to deny such rights to me and cause irreparable injury. (Complaint at ¶¶ 35, 36(k), 56, 85-87, 101-112, 116-137, 141-43, Exhibit A of Appendix.)

My complaint alleges that defendant-appellee Greig maliciously retaliated against me and conspired with the other named defendants-appelees to implement his constitutional violative acts to obstruct justice because I testified on behalf of my attorney in a purportedly sua sponte disciplinary proceeding instigated against him in December 1993 in furtherance of extortionate and coercive threats made by attorneys

from the law firm of Weil, Gotshal & Manges (Complaint ¶¶ 89-93, Exhibit A of Appendix) to destroy my attorney and source of employment unless he declined to pursue my appeal on the merits.

Denial of equal protection of the laws in violation of Section 5 of the Fourteenth Amendment under Nevada Department of Human Resources, supra, 71 U.S. L.W. 4375, 4377, 2003 U.S. LEXIS 4272 [* 13] (May 27, 2003), is applicable in this case because defendant-appellee Greig knowingly and wilfully retaliated against m, defamed me, and punished me because I testified on December 10, 1997, on behalf of my attorney and employer, and against the attorneys of Weil, Gotshal & Manges because of the blatantly unprofessional conduct by them that occurred in my presence, and that I observed.

I subsequently learned that such interrelationship between money and political favor, and judicial selection also involved defendant-appellee Arthur W. Greig who continues to receive lucrative paybacks from his involvement in orchestrating quid pro quo financial arrangements with judicial candidates for the purpose of securing their pre-arranged nominations at the annual Judicial Conventions, First Judicial District, over which Greig is the New York State Democratic Party's appointed "Convenor," and Morgan, Lewis & Bockius partners Wall and Parlo whose law firm at its New York office, specializes in "Elections and Campaign Financing" according to the law firm's announcement in 2001 Martindale-Hubbell at NYC 950B, and defendant National Union Fire Insurance Co.[1]

---

[1] Appellee Arthur W. Greig admitted in my presence at a forum on December 7, 2002, entitled "How to Become a Judge," that it takes "a quarter of a million to half a million dollars" for a person even to be considered for the position of state judge in New York County by the Democratic Party's selection process over which Greig presides as Law Chairman, New York Democratic Committee. (44th Street Notes of The Asso-

To my direct knowledge as a former Officer of the Lexington Democratic Club and appointed member of the Democratic County Committee, New York County, and duly elected Judicial Delegate/Alternate certified by the Board of Elections, appellee Greig as a result of his "deal" making, purposefully and knowingly subverts and imposes a prior restraint upon the First Amendment free speech rights of all Judicial Delegate/Alternates, including Petitioner at the Judicial Convention because, at his behest, we are intimidated and threaten by Club Presidents and District Leaders of the First Judicial District, in order prevent us from voting our conscience with respect to the judicial candidates whom we consider to be the best qualified. To my direct knowledge, Greig is counsel to the Lexington Democratic Club, Law Chairman, New York County Democratic Committee, appointed "Convenor" of the annual New York State Democratic Judicial Conventions, and an election lawyer, who receives lucrative "paybacks" for his services and political "deal" making. This is admitted by Greig in an affidavit dated December 20, 2000, filed In the Matter of Gerald J. Friedman, An Incapacitated Person, Index No. 500064/99, Supreme Court of the State of New York, County of New York, but Greig's affidavit at the same time knowingly and wilfully conceals his political involvement and activities (Exhibits A and G of Appendix submitted herewith):

> "1. I am an attorney and counselor-at-law fully admitted to practice in the State of New York."

* * * * *

---

ciation of the Bar of the City of N.Y., Dec. 2002, p. 13.) It can be presumed that because of the information on the Internet, that Judge Straub himself provided, he has direct and personal knowledge of the price tag that must be pre-paid to secure the nomination at the New York State Democratic Party Judicial Convention. This "soft-money" goes directly to the Democratic Party and to those who worked the "deal" as lucrative quid pro quo "paybacks."

"7. I have been actively practicing law for 20 years in the areas of civil trial practices in general and guardianship proceedings and other fiduciary matters (mortgage foreclosure receiverships) in particular. I have previously participated as a lecturer in 1992, 1994 and 1997 at the New York County Lawyers' Association training classes (CLE) on Mortgage Foreclosure Receiverships and other fiduciary matters. I have previously served as retained Counsel for Petitioner in many Guardianship matters, and have been appointed by Supreme Court Justices in New York County, Bronx County and Kings County to serve as Court Evaluator, Committee, Court Appointed Attorney for the AIP, Guardian ad litem, Special Referee, Referee in Foreclosure, and Mortgage Foreclosure Receiver in approximately 75-100 cases over the years. I was also a member for six years (1992-1998) of the Departmental Disciplinary Committee for the Appellate Division, First Judicial Department." (Emphasis added.)

This "smoking gun" affidavit exposes appellee Greig's pattern or practice, to the direct knowledge of Attorney General Spitzer and presumably Judge Straub, concerning the receipt of political favors by Greig in his capacity as a Receiver and a Court Evaluator as alleged in the complaint.

This Court therefore violated my constitutional rights by denying my motions to remand to the district court to obtain discovery involving Greig's inability to immunize himself from liability in view of direct political involvement, participation and facilitation of the nomination and election of judges in his capacity of New York Democratic Committee Law Chairman and Convenor of the Democratic Judicial Conventions governing the selection of Democratic candidates for nomination for judicial office for which election is a foregone conclusion and the allegations in the complaint.

Greig and his counsel in this case, New York Attorney General Spitzer, also concealed from this Court and the district court the disqualifying information about Greig's status which invalidates his defense of official immunity claimed on the basis that, as shown by his affidavit filed in the Friedman matter quoted above, at the time Greig wrote the Report dated March 14, 2000, he did not have official status and was liable under Section 487 of the New York Judiciary Law for acting only in his individual capacity as an attorney as alleged in the complaint (Complaint ¶¶ 2, 36(i), 68-70, Exhibit A of Appendix).

The falsity of that December 20, 2000 affidavit filed by Greig in the Friedman matter should cause the Attorney General to commence disbarment proceedings against him as an attorney for reflecting such discredit upon the integrity of the legal profession, rather than by attempting to shelter or immunize him from liability in this litigation by knowingly deceiving the Court with false statements concerning the status of defendant-appellee Greig. That the Attorney General was on notice with respect to its falsity of such statements by him concerning Greig is shown by my Reply dated November 23, 2002 at ¶¶ 6-8, 11, 23, 25-26, 30-35. (Appendix submitted herewith, Exhibit A.) Defendant-appellee Greig is not and never has been "Chairman of the Departmental Disciplinary Committee of the Appellate Division, First Department" (Mem.L. 10/31/02), as claimed by New York Attorney General Spitzer. This is shown by admissions by Greig in an affidavit for services sworn to December 20, 2000, filed in the Friedman matter (Exhibit A of Appendix), and by the Announcement in the 44th Street Notes of The Association of the Bar of the City of New York, December 2002, p. 13, which identifies Greig merely as "Law Chairman, New York County Democratic Committee."

Because of Greig's self-serving actions to sabotage and pervert the constitutional requirements for the selection and

election for state judges in New York County, as the "Convenor" at the Democratic Judicial Conventions, and his admissions set forth in his affidavit dated December 20, 2000, discussed above, the falsity of the statement emanating from the Office of Attorney General Spitzer that defendant-appellee Greig allegedly was "Chairman of the Departmental Disciplinary Committee of the Appellate Division, First Department" (Mem.L. 10/31/02, p. 1), and the letter dated March 4, 2003,involves a matter about which Judge Straub should be deemed to have personal knowledge in view of the available biographical information about him.

It is a matter of public record that attorneys from Weil, Gotshal & Manges are both subject and responsive to monetary solicitations by the New York Attorney General and presumably candidates from judicial office as a result of the study entitled Government Ethics Reform for the 1990s, containing the collected Reports of the New York State Commission on Government Integrity edited by Professor Bruce A. Green, with an Introduction by John D. Feerick, Esq., Chairman (Fordham U. Press: New York, 1991). A discussion of such activities directly involving Ira Millstein, Esq., managing partner of Weil, Gotshal & Manges is found at pages 185-6. The subterfuge of breaking such political contributions down into smaller amounts made by a larger number of partners of such a large law firm (or by individual clients) is obviously a matter easily arranged by Mr. Millstein as head of the firm. That favorable action is expected as a result of such contributions is a foregone conclusion, whether or not there are any pending matters involving the firm or its clients at that particular point in time.

The result in corrupting the process by the sale of political influence involving the judicial selection process in New York therefore was the same or worse than before, except that the amounts were effectively concealed or made functionally invisible by being divided between more people, was admit-

ted to me on May 28, 2003, by a politically knowledgeable person who himself had witnessed what he called the "shakedown" of the partners for $2,000 campaign "contributions" of a large law firm directly made by a candidate for the position of New York Attorney General.

The same person told me that the New York State Commission on Government Integrity was killed off shortly after the publication of its monumental study cited above. This occurred not because the work of the State Commission had been completed. The State Commission's study makes it clear that the contrary was the case, and that the cosmetic changes taken were "inadequate" in ridding the Attorney General's function of the corrupting effect of political favoritism in the administration of justice in the State of New York. (Id. at p. 185)

The death of the State Commission on Government Integrity was brought about not because of its work was finished—indeed its Report shows that it had hardly begun—but by political manipulators such as defendant-appellee Greig because of his ability to make money as a result of selling influence on the judicial election process which would have been jeopardized if the Commission had been able to implement its findings so it was given the death sentence by the Tammany Hall types who control the judicial selection process in New York County.

Moreover, with the abolition of the Commission, Greig then could falsely claim, as he did in my presence in a packed meeting on December 7, 2002, conducted under the auspices of the Association of the Bar of New York, that New York County had been cleansed of its problems in comparison, for example, with Kings County.

However, in actual fact, as I know based upon personal knowledge, the problem of paying for political influence to corrupt the judicial system is far worse in New York County

than it appears to be in Kings County. The state of affairs in New York County, as masterminded by defendant-appellee Greig, is buried under many more layers of subtlety, so that much more than the "box of cigars" used in Kings County is required from and made available to New York County judicial candidates to obtain judicial favoritism as administered by defendant-appellee Greig because of the financial powerhouses and their subservient "big firm" lawyers who are located in New York County. (Complaint, ¶¶ 137-8, 141.) The amenability of attorney General Spitzer to diverting the powers and financial resources of his position as an elected official in the State of New York in order to facilitate Greig's activities to destroy judicial independence by political favoritism in is indicated by the inconsistency of the positions that he has taken in this case compared with those he is taking in another case pending in this Court involving a sitting Judge, Hon. Thomas J. Spargo, from Albany County, New York, in Spargo v. New York State Commission on Judicial Conduct, 2003 U.S. Dist. LEXIS 2364 (N.D.N.Y. Feb. 20, 2003), a case currently on appeal in this Court, Docket Nos. 03-7250, and 03-7289. In the Spargo case, the position being advocated by Attorney General Spitzer is that the political, non-judicial activities engaged in by Judge Spargo in his free time disqualified him from the proper performance of his judicial function. In this case, involving a different party, however, Attorney General Spitzer is taking the opposite position, by falsely and deceitfully stating that defendant-appellee Greig, whose support in the quest for campaign funds is avidly sought and courted by the Attorney General, as he makes his moves to implement his plan for running for governor in the near future.

The perversion of the judicial selection process recently was described in a news item in the New York Law Journal for May 21, 2003, p. 1:

> "Incumbent Likely to Survive Rejection by Screening Panel *Two-term civil court judge said to have backing of Lexington Club*
>
> Judge Robert D. Lippmann, who is seeking a third term in a Civil Court district principally on the east side of Manhattan, has been found unqualified for re-election by a Democratic Party screening panel.
>
> Despite that rejection, political sources predict Judge Lippmann will likely win re-election because the Lexington Democratic Club, the largest political club in the Ninth Municipal District, is poised to endorse him. The district runs down the East Side from 96th Street and also takes in some Midtown areas.
>
> Several panel members said that Judge Lippmann was rejected by a 12-3 vote because of his overbearing treatment of lawyers. . . . .
>
> Judge Lippmann, 67, is an acting Supreme Court justice whose duties... and managing the trial calendar for special referees."
>
> * * * * *
>
> Arthur Greig, the counsel for the Manhattan Democratic Party was highly critical of the panel's determination. . . ."
>
> * * * * *
>
> Mr. Greig acknowledged that under its rules the county party would have been barred, in the face of the panel's rejection, from supporting Judge Lippmann for re-election had he been running for a countywide seat. But, he added, since local clubs in the Ninth District had

asked the countywide panel to review Judge Lippmann's qualification, they are not bound to follow its finding.

Lloyd McAuley, a longtime proponent of the Manhattan screening process, was critical of the party leadership's decision to jettison the panel's finding. "It's very unfortunate," he said, because "it undercuts the credibility of the screening system enormously."

Panel members were also highly critical of an effort made by the county leadership to get it to reconsider its vote. "The Democratic Party is not supposed to stick its hand in the pot and stir up a committee after it has voted," one panel member said. Another described the panel as dismayed that the leadership had offered the panel a set of standards to guide its reconsideration that did not include temperament." (Emphasis added.) [2]

* * * * *

The panel decided by a 13-4 vote not to reopen its deliberations, members said."

Further evidence of defendant Greig's wilful acts to falsify the record involving me and defame me further regarding my meritorious sexual harassment state court action against the Red Cross defendants and its Chief Executive Officer, Robert M. Bender, Jr., is his deliberately false and defamatory statement, contrary to all the evidence in the record showing that Bender was and is a repetitive and abusive sexual predator, and that the true relationship between Bender and the Red Cross women employees known to be in his harem at the Red Cross was a "romantic involvement."

---

[2] Petitioner's personal knowledge affidavits and motions to recuse the judge in the state court expressly describe the judge's in-court demeanor and lack of temperament which adversely impacted upon her ability to adjudicate Petitioner's sexual harassment state court action.

This disgustingly defamatory statement falsely and maliciously made by defendant-appellee Greig about former employees of the Red Cross, could only have been made by him as a result of retaliatory ex parte communications by attorneys from the law firm of Weil, Gotshal & Manges, and/or Morgan, Lewis & Bockius who are defendant-appellees in this litigation. Since these defamatory statements made in Greig's Report dated March 14, 2000, were well within the applicable one-year statute of limitations period before this case was filed on May 5, 2000, and are in writing and cannot be disputed, they are libelous per se and subject to a claim for the recovery of punitive damages for such false statements about the female sex victims of a hateful and coercive sexual monster such as Bender. Nevertheless, the Red Cross, a not-for-profit agency of the federal government (*American National Red Cross v. S.G. and A.E.*, 505 U.S. 247, 112 S.Ct. 2465 (1992)), instead of taking redemptive and corrective action, has seen fit to continue to pay millions of dollars to their attorneys and insurance companies in order to silence me, and to continue to block the prosecution of my constitutional equal protection rights under the laws.

The causal connection between Greig's Report and the conspiratorial acts of the named defendants to silence me also is shown by the fact that action instigated by defendant-appellee Greig caused my amended verified complaint dated May 24, 2000, and motion for temporary and preliminary relief dated November 3, 2000, to be submitted to induce the Appellate Division, First Judicial Department, to go beyond the record that had been made in that proceeding, in which I was not a party, and over whom the state court and state agency did not have jurisdiction, to enhance and extend a three month recommended suspension of my attorney, to 24 months in order to silence me and my effective representation in this litigation in federal court at Greig's behest, my com

plaint and motion papers in this action were attached to the submissions to the Appellate Division dated August 1, 2000, and December 5, 2000, respectively.

Malicious bias by Greig resulting in a denial of due process became evident when, in the presence of others during, a telephonic conference call on November 4, 1998, at a time when he was both acting in the capacity of Chair of the Disciplinary Hearing Panel and actively receiving lucrative "paybacks" for his political deal-making of state court judges in New York County, as shown by his affidavit in the Friedman case, he threatened Petitioner and stated "*you will have to face up to what you did sooner or later.*" The retaliatory injury that resulted is evidenced by the suspension of Petitioner's attorney, who is also her employer, so that he could no longer represent her for the purpose of pursuing her claims in this litigation, and the district court's indication that it would dismiss her complaint unless she found other counsel or proceeded as a pro se litigant.[3] Further injury is shown by the district court's reversible error in failing to address my repeated requests for discovery and a hearing, in dismissing the complaint, and imposing a prior restraint order involving a permanent injunction and the imposition of sanction without providing me with a notice or a hearing.

In addition, Spitzer himself has publicly admitted he was the recipient of over $4,800,000 in campaign contributions before his last election as Attorney General in November 2002, as shown at paragraph 21 of Petitioner's Reply Declaration dated November 23, 2002 (Exhibit A of Appendix), and undoubtedly intends to lure many millions more to be paid from the "big firm" donors and their clients in connection with the implementation of his plan to run for governor

---

[3] Petitioner was unable to find other counsel and was repeatedly told that reprisal by the Departmental Disciplinary Committee would most likely be taken against any attorney who represented her in this litigation.

(New York Law Journal, 5/21/03, p. 6). Under the holding in Tumey v. Ohio, 273 U.S. 510, 524 (1927), Attorney General Spitzer therefore is and should be disqualified from acting as a state official involved in the administration of justice for the State of New York in view of the financial factors applicable both to himself and defendant-appellee Greig.

What the collected Reports of the New York State Commission on Government Integrity, and the circumstances of this case make clear beyond any doubt is that law students such as myself, who are without significant financial resources, and other pro se litigants or those who otherwise are financially unable to retain law firms such as Weil, Gotshal & Manges or Morgan, Lewis & Bockius with so many hundreds of lawyers that they can be called upon to make political contributions that are so small as to be deemed to be virtually invisible, but in the aggregate can have a tremendous impact in thwarting and sabotaging the constitutional guaranty of an independent judiciary, will routinely be exposed to the violation of their rights to receive "equal protection of the law" as litigants as a result of the political manipulations of the state judiciary election systems such as defendant-Greig and Attorney General Spitzer.

Because the judicial election process required under the New York Constitution has been sabotaged and perverted by such activities by Greig and Spitzer, and their "big firm" sources of funds used to procure judicial favoritism, and the prior restraint and punitive action imposed upon me under the injunction imposed by the district court in violation of my free speech rights to object, this petition for a writ of mandamus and/or motion should be granted in order to give effect to Republican Party of Minnesota v. White. 536 U.S. 765 (2002), and Nevada Department of Human Resources v. Hibbs, __ U.S. __, 71 U.S.L.W. 4375, 2003 U.S. LEXIS 4272 (May 27, 2003).

CONCLUSION

For the reasons set forth above, and in the pertinent documents set forth in the Appendix submitted herewith, petitioner respectfully urges this Court to issue a writ of mandamus pursuant to 28 U.S.C. § 1651 and Rule 21 Fed.R.App.P.:

(a) Ordering the reinstatement of the appeal;

(b) Ordering that the case be remanded to the district court in order to make findings and determinations left unresolved;

(c) Ordering the disqualification of Hon. Chester J. Straub from further participation or involvement in this litigation; and

(d) Vacating the orders and stays issued in this Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 30, 2003 in New York, New York, pursuant to 28 U.S.C. § 1746.

Respectfully submitted,

Joan Carol Lipin
P.O. Box 1257
New York, New York 10028
(212) 722-5894

Petitioner/Movant Pro Se

APPENDIX M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

00 Civ. 3457 (LTS)(DFE)

JOAN CAROL LIPIN,

Plaintiff,

- against -

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, AND ARTHUR W. GREIG, in his individual and official capacity,

Defendants.

NOTICE OF APPEARANCE

JOAN CAROL LIPIN, the plaintiff in the above entitled action, hereby enters a Notice of Appearance to represent herself, *pro se*, in the above entitled action as required by this Court's Order dated August 15, 2001 (Exhibit A annexed hereto), but states that I do not waive my constitutional and other objections thereto including the following:

(1) That said order infringes and vitiates my rights of access to the federal courts and to petition for a redress of grievances, to freedom of speech, due process, equal protection, and my privileges and immunities;

(2) That the order suspending my counsel is not yet final and also subject to a pending appeal in the United States Court of Appeals for the Second Circuit;

(3) That the order can not constitutionally be given retroactive effect so as to deprive the undersigned plaintiff of the effective assistance of qualified counsel

knowledgeable about the complex issues of fact and law that are involved in this litigation;

(4) That the Hearing Panel in the disciplinary proceeding found that the dismissal of my valid claims for sexual harassment constituted a "tragedy of epic proportions" shown in Exhibit B annexed hereto at page 12, and had recommended a suspension of only three (3) months, under which my counsel could have continued to represent me in this litigation since more than three months have now expired;

(5) That Andral N. Bratton, Esq., Staff Counsel, in collusion with defendant Arthur W. Greig and the other defendants herein attempted to usurp and tortiously interfere with the jurisdiction of this Court, and did so maliciously in furtherance of the "tragedy of epic proportions" that had been found to exist

(a) by improperly attaching my verified amended complaint filed in this Court as Exhibit F to the Petition dated August 1, 2000, filed in the Appellate Division, First Department, in the proceeding against my attorney (Exhibit B annexed to Lipin Aff. sworn to Nov. 3, 2000); and

(b) by improperly attaching as Exhibit A the Notice Of Plaintiff's Motion for Temporary and Preliminary Relief and my affidavit sworn to November 3, 2000 that had been filed in this Court, to the Reply Affirmation of Andral N. Bratton, Esq., dated December 5, 2000, and filed with the Appellate Division, First Department, in an attempt to cause prejudice to my constitutional due process rights to litigate in this Court the issues raised therein (Exhibit C annexed hereto);

(6) That as an aider and abettor to defendants, Andral N. Bratton, Esq., engaged in such impermissible and retaliatory acts with malice aforethought in violation of Disciplinary Rules of the Lawyers' Code of Professional Responsibility § 1200.36 [DR 7-105] because, as he

admitted on December 17, 1997 (TR 12/17/97, pp. 179-180, Exhibit D annexed hereto), he failed to impeach my testimony on December 10, 1997 (TR 12/10/97, pp. 145-148 Exhibit E annexed hereto) on behalf of Arthur M. Wisehart, concerning my in-court testimony on July 8, 1991 (Tr 7/8/91, Exhibit F annexed hereto) that the possession of the documents was only temporary and for my own protection (p. 96):

> ". . ., and for my own protection, and I would give those documents back to Mr. Baer, Mr. Jacoby, if he had asked. But Mr. Baer did not call our office nor did you, Mr. Jacoby, from June 28 to July 2nd;"

(7) That on the basis of my testimony on July 8, 1991, Justice Karla Moskowitz on July 11, 1991, made the finding that the documents were not "stolen" (Exhibit G annexed hereto, Tr pp. 146-147):

> "THE COURT: Counselor, *if I were the plaintiff— her testimony isn't that she stole papers, but that she sat down and the papers were in front of her, right?*
>
> "Mr. Jacoby: Your Honor, *these were papers on a counsel [conference] table. She didn't put them there. Not her lawyer. The lawyer on the other side.*
>
> "Now, I don't believe for one minute that this pile of papers was sitting directly in front of her in a neat pile facing her four inches off the table.
>
> "THE COURT: *That is the testimony.* "Mr. Jacoby: I understand that.
>
> "THE COURT: *You didn't bring anybody in to say that the papers were scattered, or the papers were on the other side of the table, or the papers were at the foot of the table, or the papers were in any other location. If I choose to believe the plaintiff then her testimony*, and I was just looking for it, is that she sat down before argument started

and when she sat down, right in front of her, four inches from the edge of the table, was a neat stack of papers." (Emphasis added);

(8) That on the basis of such evidentiary finding, the falsity of the personal knowledge affidavits of defendants Lawrence J. Baer, Esq., and Mark A. Jacoby, Esq., sworn to July 3, 1991, is established;

(9) That the Appellate Division, First Department made the further evidentiary finding in *Lipin v. Bender et al.*, 193 A.D.2d 424, 597 N.Y.S.2d 340, 341 (1st Dep't 1993) that:

> "It is unclear why and by whom the documents were placed in that precise location and not otherwise safeguarded, but counsel for defendants were sitting directly across the 12 by 6 foot [conference] table;"

(10) That on the basis thereof my counsel would not have been suspended from representing me under federal law under the principle of *Securities and Exchange Commission v. Cassano et al.*, 189 F.R.D. 83 (S.D.N.Y. 1999); *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103 (S.D.N.Y. 1985); *Amgen Inc. v. Hoechst Marrion Roussel, Inc.*, 190 F.R.D. 287 (D. Mass. 2000); *United States v. Jones*, 696 F.2d 1069 (4th Cir. 1982); and *In re Grand Jury Proceedings*, 727 F.2d 1352, 1356-7 (4th Cir. 1984), particularly in view of the finding of the Hearing Panel that I and my claim for sexual harassment had been subjected to a "tragedy of epic proportions" as a result of such dereliction on the part of counsel for the defendants in failing to provide adequate protection for the documents involved;

(11) That counsel for defendants Jacoby, Baer, and Parlo should be disqualified on the basis of impermissible conflicts of interest and acts of trickery by big firm attorneys in furtherance of their pattern or practice of assisting their clients in ruining the health and careers of victims of discrimination like myself and Edward Talvy

by retaliating against them (Third Amended Complaint annexed hereto as Exhibit H);

(12) That being deprived of counsel at this critical stage of the litigation constitutes irreparable injury to me;

(13) That the acts of sexual harassment perpetrated upon me have caused what had previously been diagnosed by an eminent psychiatrist to be a condition of post traumatic stress syndrome as shown in Exhibit I annexed hereto;

(14) That as a health care professional, I know that the disaster of September 11, 2001, and the ensuing events have caused fear, terror, grief, and shock to me personally, in further aggravation of my condition of post traumatic stress syndrome, so that I am virtually incapacitated, and incapable of representing myself effectively;

(15) That I am without financial resources, and in opposing "big firm" lawyers who are able to pay even unseasoned associates $145,000 per year or more, I have been deprived of my counsel and whereas I am unable to obtain competent counsel to represent me because of fear of reprisal, although I have tried to do so, and that as a consequence I am being deprived of equal protection;

(16) That under the supremacy clause in Article VI of the Constitution and *In re Rafflo*, 390 U.S. 544 at 554-555, 596, 88 S.Ct. 1222 (1968), this Court has jurisdiction to permit Arthur M. Wisehart to continue to act on my behalf as my counsel for the purpose of this litigation; and

(17) That if I must proceed as a *pro se* litigant, notwithstanding the foregoing objections, such directive of the court would be lacking in compassion, mercy and justice in view of the above objections, and also because I am a second year evening student at New York Law School;

WHEREFORE, I throw myself on the mercy of this Court and, in the alternative to this Notice of Appearance, respectfully ask that Arthur M. Wisehart be permitted to continue to act on my behalf as my counsel for the purpose of this litigation under principles of right and justice in accordance with *In re Ruffalo*, 390 U.S. 544, at 554-555, 88 S.Ct. 1222 (1968), which states:

> "We must determine whether the Court of Appeals satisfied its duty 'not to disbar except upon the conviction that, under the principles of right and justice, [it is] constrained so to do.' *Selling v. Radford*, 243 U.S. 46, 51 (1917)."

Respectfully submitted,

/s/ Joan Carol Lipin
Joan Carol Lipin
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894

APPENDIX N

STATUTES AND CONSTITUTUIONAL PROVISIONS

42 USCS § 1983 (2003)—Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

* * * *

CHAPTER 21. CIVIL RIGHTS

42 USCS § 1985 (2003)—Conspiracy to interfere with civil rights

(1) Preventing officer from perfoming duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth

in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

* * * *

42 USCS § 1986 (2003)—Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT 1

USCS Const. Amend. 1 (2003)—

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * * *

AMENDMENT 5

USCS Const. Amend. 5 (2003)—

Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

USCS Const. Amend. 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without die process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(2)

No. 03-446

Supreme Court, U.S.
FILED
NOV 10 2003
OFFICE OF THE CLERK

In The Supreme Court of the United States

JOAN CAROL LIPIN,

Petitioner,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, LAWRENCE J. BAER, MARK A. JACOBY, CHRISTOPHER A. PARLO, STEVEN R. WALL, AMERICAN NATIONAL RED CROSS, and ARTHUR W. GREIG, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY

Joan C. Lipin
Petitioner Pro Se
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

13 pp

TABLE OF CONTENTS

Preliminary Statement 1

I. THE NEW YORK ATTORNEY GENERAL HAS WAIVED ANY ELEVENTH AMENDMENT OBJECTION TO THE SUBJECT MATTER JURISDICTION OF THE COURTS BELOW 2

II. THE PETITION IS CERTWORTHY ALSO BECAUSE IT WILL REQUIRE NEW YORK ATTORNEY GENERAL SPITZER TO BREAK HIS SILENCE AND COME FORWARD WITH THE INSIDER INFORMATION THAT HE AND HIS CLIENT UNIQUELY POSSESS ABOUT THE CORRUPTION OF THE JUDICIAL ELECTION PROCESS IN NEW YORK 6

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

Dennis v. Sparks,
449 U.S. 24 (1980) 3

Dubuc v. Michigan Board of Law Examiners, __ F.3d __,
2003 U.S. App. LEXIS 18153
(6th Cir. Sept. 3, 2003) 4

Ex Parte Young,
209 U.S. 123 (1908) 2

Gideon v. Wainwright, Corrections Director,
372 U.S. 335, 9 L.Ed. 2d 799,
83 S.Ct. 792 (1963) 6

Jeffreys v. Dr. Griffin,
2003 N.Y. LEXIS 3409
(Oct. 30, 2003) 5

Nevada Dept. of H.R. v. Hibbs,
__ U.S. __, 155 L.Ed. 2d 953,
123 S.Ct. 1972 (May 27, 2003) 4

Stewart v. Wyoming Cattle Ranch Co.,
128 U.S. 383, 32 L.Ed. 439, 9 S.Ct. 101 (1888) 1

United States v. John Doe,
203 U.S. App. LEXIS 22105
(2d Cir. Oct. 29, 2003) 8

Constitutional and Statutory Provisions

U.S.CONST.amend. I 1, 2, 5, 6

U.S.CONST.amend. XI 2, 3, 4

U.S.CONST.amend XIV,
Section 5 4

28 U.S.C. § 455 8

New York Judiciary Law,
Section 487 3

Other Authorities

Evidence and Witnesses, § 294,
58 *New York Jurisprudence*
2d 56 (2000) 1

Trial Handbook for New York Lawyers
2d § 25:7 1

Miscellaneous

AM New York, Nov. 4, 2003, p. 2 7

PETITIONER'S REPLY

Preliminary Statement

With respect to the certiorari petition filed herein, the response of six of the seven respondents was to file a waiver, and the seventh respondent, National Union Fire Insurance Company of Pittsburgh, PA., defaulted in making any response. An unqualified waiver was filed for respondents Christopher A. Parlo and Steven R. Wall by Morgan, Lewis & Bockius by letter. Four of the respondents stated they waived their right to respond to the petition unless this Court specifically requires them to file a response. The respondents filing such qualified waivers were Arthur W. Greig, whose response was by the New York Attorney General, and the American National Red Cross, Lawrence J. Baer, and Mark A. Jacoby, whose response was by Weil, Gotshal & Manges, despite its disabling conflict of interest in filing such a response for the Red Cross since two of the named respondents are individuals who are lawyers in that same law firm.

Petitioner therefore respectfully submits this Reply to show why the public interest in the questions presented in the certiorari petition is such that the silence of respondents should be treated as a consent to the certworthiness of the petition, in accordance with the general rule applicable to the effect of silence by parties to pleadings such as a certiorari petition, see *Trial Handbook for New York Lawyers* 2d § 25:7, rather than a denial, especially since the First Amendment specifically guarantees the right to file such a petition for a redress of grievances.

See also *Stewart v. Wyoming Cattle Ranch Co.*, 128 U.S. 383, 390, 32 L.Ed. 439, 442, 9 S.Ct. 101 (1888). As stated in Evidence and Witnesses, § 294, 58 *New York Jurisprudence* 2d 56 (2000):

> "As a general rule, where a statement is made, in the presence and hearing of one who since has become a party to an action, in regard to facts affecting his or her rights and he or she makes no reply, such silence may be construed as a tacit admission of the facts stated."

I. THE NEW YORK ATTORNEY GENERAL HAS WAIVED ANY ELEVENTH AMENDMENT OBJECTION TO THE SUBJECT MATTER JURISDICTION OF THE COURTS BELOW

The record below supports petitioner's assertion that New York Attorney General Eliot Spitzer effectively waived respondent Greig's alleged Eleventh Amendment immunity defense by seeking and obtaining a stay on discovery, and participating in the retaliatory punitive action against petitioner by affirmatively acting to cause her to be deprived of her right to be represented by qualified counsel so that petitioner's First Amendment rights could not be prosecuted effectively, and waived any Eleventh Amendment defense by voluntarily and actively participating in the merits of the pretrial litigation by representing respondent Greig on an individual basis.

Moreover, the Eleventh Amendment does not preclude suits against state officials for injunctive relief, even when the remedy will enjoin the implementation of an official state policy. See *Ex Parte Young*, 209 U.S. 123 (1908). Such declaratory and injunctive relief is specifically requested in the complaint filed in this litigation that is verified by petitioner. (Pet.App. 171a-224a).

In addition, with respect to the claim for damages, respondent Greig was sued only in his individual capacity with any monetary liability to be imposed only upon him personally

(or his insurer), not the State of New York or any of its agencies.

By representing respondent Greig on the claims asserted against him individually, therefore, the New York Attorney General waived any Eleventh Amendment claim of immunity.

The claims against respondent Greig are specifically made pursuant to Section 487 of the New York Judiciary Law (Pet.App. 178a-179a, 190a, 224a). Treble damage claims are available under Section 487 to impose individual liability upon any New York lawyer such as respondent Greig. However, the language of the statute does not impose monetary liability upon the State of New York or any of its agencies.

Respondent Greig also is subject to individual liability as a co-conspirator under *Dennis v. Sparks*, 449 U.S. 24, 31-32 (1980), along with the other respondents named as co-conspirators, who are subject to claims for personal liability as set forth in the Amended Verified Complaint (Pet.App. 196a-199a, 204a, 205a, 211a, 212a, 221a-224a, ¶¶ 80-82, 98, 100, 137, 139, 170).

As stated in *Dennis v. Sparks*:

> "... we agree with the Court of Appeals that the potential harm to the public from denying immunity to private co-conspirators is outweighed by the benefits of providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons."

Even if respondent Greig claims that he acted on behalf of the State of New York as an official, the disputed fact issues that the record raises invalidate the viability of any such claim (Pet.App. 64a-88a; 105a-125a; 126a-170a). In addition, the requests for injunctive relief asserted in the complaint (Pet.App. 171a) are not barred by the Eleventh Amendment in any event. As stated in *Dubuc v. Michigan Board of Law Examiners*, __ F.3d __, 2003 U.S. App. LEXIS 18153 [** 8] (6th Cir. Sept. 3, 2003):

> "To determine whether an entity is a state department or agency for purposes of the Eleventh Amendment, the primary issue is whether the state would ultimately be liable for any money judgment against the entity. *Brotherton v. Cleveland*, 173 F. 3d 552, 560-61 (6th Cir. 1999)."

The Sixth Circuit held in *Dubuc*, *supra*, that ". . . the individual defendants are not entitled to Eleventh Amendment immunity from this suit." (*Dubuc*, *supra*, 2003 U.S. App. LEXIS 18153 [** 12].)

Also applicable is *Nevada Dept. of H.R. v. Hibbs*, _ U.S. __; 155 L.Ed. 2d 953, 123 S.Ct. 1972 (May 27, 2003) (Pet.App. 7a, 10a), which holds that Eleventh Amendment immunity is not available to claims like those in this case that have been asserted under legislation enacted pursuant to Section 5 of the Fourteenth Amendment.

In addition, the waiver of the Eleventh Amendment immunity claims by New York Attorney General Spitzer is shown by his inconsistent reliance on the collateral estoppel defense in connection with the merits of the claims asserted against respondent Greig.

The recent decision by the New York Court of Appeals in *Jeffreys v. Dr. Griffin*, 2003 N.Y. LEXIS 3409 (Oct. 30, 2003), demonstrates the lack of merit of such defense.

The *Jeffreys* case holds that collateral estoppel does not apply to a patient (or client) in a subsequent civil action, such as in this case, "because the patient is not a `legally recognized party in interest," a doctrine that is applicable to petitioner concerning the Hearing Committee proceeding, where petitioner testified as a voluntary witness in the proceeding that was presided over by respondent Greig, because a person such as petitioner "enjoys no legal or practical opportunities to litigate civil law grievances within the framework of [the Hearing Committee's] proceeding."

In addition, under the decision in the *Jeffreys* case collateral estoppel is not available herein because there never was a full and fair hearing or "an opportunity to contest the identical issue" (92 NY 2d at [2003 N.Y. LEXIS 3409 * 12]), in that proceeding, since respondent Greig was so biased and prejudiced against petitioner he was unable to provide the requisites of due process. Moreover, in the subsequent proceeding in the district court that resulted in petitioner's being deprived of counsel as a result of the activities of respondent Greig and the New York Attorney General in causing petitioner's First Amendment rights to be effectively eviscerated, by causing her to be deprived of competent counsel to speak on her behalf regarding the complexities of her constitutional and civil rights claims, petitioner was deprived of even the pretense of a hearing. (Pet.App. 250a-255a; 89a, 158-160a.)

Because of the lack of a level playing field in which an army of lawyers have conspired to gang up on petitioner, a *pro se* litigant who is a woman, under the endorsement of the New

York Attorney General, the appointment of independent counsel to represent the petitioner for this purpose before this Court is respectfully requested in accordance with the procedure followed in *Gideon v. Wainwright, Corrections Director*, 372 U.S. 335, 9 L.Ed. 2d 799, 83 S.Ct. 792 (1963).

II. THE PETITION IS CERTWORTHY ALSO BECAUSE IT WILL REQUIRE NEW YORK ATTORNEY GENERAL SPITZER TO BREAK HIS SILENCE AND COME FORWARD WITH THE INSIDER INFORMATION THAT HE AND HIS CLIENT UNIQUELY POSSESS ABOUT THE CORRUPTION OF THE JUDICIAL ELECTION PROCESS IN NEW YORK

The record below shows that the New York Attorney General and his client respondent Greig became active co-participants in the scheme to retaliate against petitioner for opposing Greig's political skulduggery by causing irreparable and punitive injury to petitioner's civil rights including her free speech rights and her First Amendment right to protest and petition for a redress of grievances.

Not only was the New York Attorney General personally involved in the actions that caused petitioner to be deprived of counsel, but in addition he had a major conflict of interest as a result of his actions (Pet. 4-5, 9-11; Pet.App. 233a-236a, 247a-248a) in causing such drastic retaliatory punitive action to be taken against petitioner in the process of his representation of respondent Greig.

The public interest requires a response by New York Attorney General Spitzer to this petition because he is the possessor of extensive personal knowledge concerning both the

activities of his client Grieg as the fixer of political elections for New York State judicial candidates in New York County (Pet. 4-5, 7-8; Pet.App. 236a-245a, 204a-214a, 177a-178a), and also concerning the necessity for the disqualification of Judge Straub (Pet. 11-12, 14-15; Pet.App. 230a-239a) in connection with the actions of the Second Circuit (Pet. 5-6; Pet.App. 1a, 3a, 5a, 7a).

Such present personal knowledge on the part of Mr. Spitzer is indicated in the following news item in *AM New York*, a New York City Newspaper, dated November 4, 2003, p. 2, which reports that Spitzer "is looking to raise $2 million at a fundraising function next month" in connection with his plan to run for governor, according to his aides in Albany.

Certiorari therefore should be granted so that Attorney General Spitzer would be required at last to come forward and make known the extensive information of which he and his client possess concerning election fraud and the political skulduggery that has brought into disrepute the scandalous pattern or practice of the selling of judicial influence in New York County in return for political contributions or other favors. (Pet.App. 205a-211a, 239a, 241a-243a)

As the Attorney General of the State of New York, Eliot Spitzer has a public duty to come forward with such information that is within his own personal knowledge, especially since his own inside knowledge is at least as great as that of the insiders in the mutual fund industry that he is currently vigorously engaged in requiring the production of such information about the skulduggery that is apparently rampant in that industry.

The high degree of certworthiness involving the third question presented by the petition herein, namely, whether

Judge Straub of the Second Circuit was subject to mandatory disqualification pursuant to 28 U.S.C. § 455 (Pet.App. Pet. 5-6; Pet.App. 230a-239a) is indicated by the silence of New York Attorney General Eliot Spitzer on the issue. The undisclosed personal knowledge that both Mr. Spitzer and his client possess concerning this subject makes the Attorney General's silence on the issue akin to an obstruction of justice.

The public interest in the integrity and independence of the judicial function is such that the petition for a writ of certiorari should be granted so that Attorney General Spitzer, who is dependent upon the political levers of power possessed by his client, respondent Greig, in his bid for the governorship (Pet.App. 247a-248a), will produce the information that he possesses as a political insider who himself has and will profit extensively from the dispensation of the relationship between and the political contributions and favors of the activities of respondent Greig that to petitioner's own knowledge involve election fraud, and to withdraw from continuing to represent respondent Greig as a necessary witness, as he is required to do under the Code of Professional Responsibility.

Also relevant to the disqualification issue is the Second Circuit's decision in *United States v. John Doe*, 203 U.S. App. LEXIS 22105 (2d Cir. Oct. 29, 2003), issued just this week, which holds that a district judge was subject to mandatory disqualification because he appeared to have engaged in rubber-stamping [* 9] the recommendations of the U.S. Attorney on sentencing matters, citing *United States v. Campo*, 140 F.3d 415 (2d Cir. 1998).

The record on this appeal is that Judge Straub not only acted merely as a rubber-stamp based upon ex parte dealings with clerical personnel in the Second Circuit's office, as shown in the mandamus petition attached to the Petition Appendix at

225a, as shown at 226a, but also was subject to mandatory disqualification because his personal involvement in the promotion of partisan political interests concerning which Attorney General Spitzer and his client respondent Greig also had extensive personal involvement, as shown in the appendix to the petition at 234a-243a, making an *a fortiori* case for consideration of the applicability of the mandatory disqualification requirement.

CONCLUSION

The petition for a writ a certiorari should be granted and petitioner's request for the appointment of independent counsel should be considered and granted.

Dated: November 7, 2003

Respectfully submitted,

Joan Carol Lipin
Petitioner Pro Se
45 East 89th Street
Apartment 14 G
New York, New York 10128
(212) 722-5894